DOCUMENT RESUME

ED 108 701 IR 002 239

TITLE	Selecting a Cable System Operator.
INSTITUTION	Cable Television Information Center, Washington, D.C.
SPONS AGENCY	Ford Foundation, New York, N.Y.; John and Mary R. Markle Foundation, New York, N.Y.
PUB DATE	75
NOTE	73p.
AVAILABLE FROM	Cable Television Information Center, The Urban Institute, 2100 M Street, N.W., Washington, D.C. 20037
EDRS PRICE	MF-$0.76 PLUS POSTAGE. HC Not Available from EDRS.
DESCRIPTORS	*Administrative Agencies; *Cable Television; Commercial Television; Community Antennas; *Decision Making; Government (Administrative Body); *Guides; *Local Government; Television
IDENTIFIERS	Cable Television Information Center; *CATV Operators; Forms; Franchises; Franchising Authorities; Licensing

ABSTRACT

Intended to assist franchising authorities with the process of selecting a cable television system operator from franchise applicants, this document provides a framework for analysis of individual applications. Section 1 deals with various methods which can be used to select an operator. The next section covers the application form, the vehicle a franchise authority uses to obtain information relevant to the local government's choice of a franchise from among interested parties. Section 3 discusses guidelines to be followed in analyzing information obtained from applicants. Finally, a number of forms designed to elicit various relevant information are appended. (Author/DGC)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

Cable Television
Information Center
the urban institute

Selecting A Cable System Operator

ED108701

IR 002 237

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL BY MICRO FICHE ONLY HAS BEEN GRANTED BY

TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER.

Copyright © 1975 by Cable Television Information Center, The Urban Institute. All rights reserved. No part of this document may be used or reproduced in any manner whatsoever without written permission except in the case of brief quotations embodied in critical articles and reviews. For information address: Cable Television Information Center, 2100 M Street, N.W., Washington, D.C. 20037. Att: Information Group.

ED108701

SELECTING A CABLE SYSTEM OPERATOR

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

CABLE TELEVISION INFORMATION CENTER
The Urban Institute
2100 M Street, N.W., Washington, D.C. 20037

PREFACE

This document was prepared by the Cable Television Information Center under grants from the Ford Foundation and the John and Mary R. Markle Foundation to The Urban Institute.

The primary function of the center's publications program is to provide policy makers in local and state governments with the information and analytical tools required to arrive at optimum policies and procedures for the development of cable television in the public interest.

CONTENTS

INTRODUCTION 7

I. METHODS OF SELECTING A CABLE TELEVISION SYSTEM OPERATOR 7

II. APPLICATION FORM 9

Standard Information 10

Local Options 15

III. SOME ISSUES IN SELECTING A CABLE TELEVISION SYSTEM OPERATOR AND IN DEVELOPING THE FRANCHISE 27

Due Process and Franchisee Selection 27

Waivers of the FCC Rules 28

The Manner of Presenting Information to the Franchise Authority 29

Designation of Demands as Negotiable or Nonnegotiable 29

Weighting Schemes for Bids 30

Evaluation of Applications 30

IV. APPLICATION FORMS 31

INTRODUCTION

This report is intended to assist franchising authorities with the process of selecting a cable TV system operator from franchise applicants. A community's selection of a cable television system operator is important principally because a cable operator who is selected will likely provide cable service to the community for many years. Even after an initial franchise term has expired, many local governments find that a renewal of the original operator's franchise is less disruptive than selecting a new franchisee. Thus, the original decision is one that may affect the community for decades. Because different cable television companies have varying attitudes and policies regarding provision of service, local authorities should seek to discern the differences that matter to their communities.

The first section of the report deals with the various methods which can be used to select an operator. The next section covers the application form, the vehicle a franchise authority uses to obtain information relevant to the local government's choice of a franchisee from among interested parties. The following section discusses guidelines to be followed in analyzing the information obtained from the applicants in order to make an informed choice. Finally, a number of forms designed to elicit various relevant information are appended. They are taken from, and should be read together with, the text of Section II of this report. *The text contains numerous explanations and alternative suggestions that are not included in the forms. Both text and forms are intended to be read and used in tandem. Use of the forms without an understanding of the text will result in confusion and wasted efforts.*

The application forms are divided into two segments. Forms A through K request information that any franchise authority should seek. Of course, categories may be added if local officials wish to learn more about applicants than the appended forms will generate for them. In addition, the text that accompanies and explains the forms indicates in several places that the franchise authority may wish to pursue that type of information in a different way. Forms L through R suggest formats for seeking information that relates to matters the center considers to be local options. In each of these cases, a decision must first be made as to whether the subject is of importance to the local government. Then the issue must be examined by responsible officials and substantive choices made. In all likelihood, no franchise authority will want to utilize all of the local option forms. Moreover, there are issues not covered in this report that may be of particular local significance and for these the franchise authority will have to devise its own way of eliciting information.

Whether a local government closely follows the appended forms or devises its own format for soliciting data from applicants, it is critical that the format used be a standardized one. The purpose of soliciting information from applicants is to draw comparisons among them. The task of making distinctions among applicants is far more manageable if the applicants must respond to the government's questions in exactly the same manner.

Finally, local authorities must review the forms to determine how they wish to define "principal" as that term is used in the forms. Moreover, the terms should perhaps be defined differently for different forms (as can be seen in an examination of the forms at the back of this report). For example, we suggest that it be determined whether the applicant is a U.S. citizen, because aliens are barred from obtaining certain licenses from the Federal Communications Commission. Such licenses may be necessary for microwave transmission or reception of signals or for interconnecting certain kinds of facilities. In that case, "applicant" means owners of one per cent or more of the stock of the licensee. However, for purposes of ascertaining the applicant's character qualifications, inquiries should be made as to any past convictions of the company's policy makers. In this case, it is probably irrelevant that the owner of 1.1 per cent of the company's outstanding shares had a businesss license revoked many years ago; but that knowledge would be relevant as to the owner of 55 per cent of the shares, or any other interest that entitles one to a voice in the formulation of company policy. Thus, the franchise authority should decide how broadly or narrowly it wishes to define terms such as "applicant" and "principal" in the first set of forms.

I. METHODS OF SELECTING A CABLE TELEVISION SYSTEM OPERATOR

This section provides a general description of the methods of selecting a cable television franchisee and notes some of the reasons for choosing a particular method of selection. The descriptions of these methods are not intended to be comprehensive; moreover, the "bid" method and the "negotiation" process described below are somewhat artificial and are illustrated here to afford a

sense of the various elements involved in the selection of a cable television franchisee. Later, in Section III of this report, some rules of thumb will be discussed.

Generally speaking, there are three methods a franchise authority may employ in selecting a system operator and formulating the terms of its cable franchise. They are:

— bidding to established specifications;
— negotiating for the franchise; and
— undertaking a process which involves both bidding and negotiating.

The first of these methods, bidding to established specifications, is one which is traditionally used by governmental entities to award contracts for goods or services. The government establishes its specifications by describing the tasks to be performed or the goods to be purchased. It also determines the criterion or criteria against which the various bids to be solicited will be measured. After the specifications and criteria for judgment are developed, these decisions are publicly announced with an invitation extended to interested persons or corporations to bid for the contract.

In its least complicated aspect, a bid is a declaration that the bidder will provide the requested service or goods under specified conditions. The most frequent conditions in these bidding situations involve the cost of the goods or services. The standard criterion used to evaluate bids is that the "lowest responsible bidder" will be awarded the contract. With respect to cable television service, bids can most easily be evaluated in terms of subscriber rates. However, to select a franchisee on this basis would be artificial and unrealistic. Rarely, if ever should the rates for cable service be the sole criterion for choosing one bidder over another. Rather, it is the type and quality of services offered which are better standards for determining the franchisee. As will be seen later, however, some elements of the "bid" process can be employed quite successfully in the franchisee selection process.

A second method for determining the terms of franchise is by negotiation. Negotiation of a contract or franchise theoretically involves two basic elements:

— There are only two principals to the negotiations — one "buyer" and one "seller"; and
— agreement will be reached between these two principals only or no agreement will be reached at all.

The process itself, narrowly considered in the context of cable TV, requires that the f[illegible]ity choose the franchisee and then d[illegible]s of the franchise, as compared to the [illegible] where the franchise terms are deci[illegible]e franchisee is selected. In practical terms, the negotiation method permits the franchise authority to focus on the franchise terms, "trading-off" the right to hold the franchise against securing the franchisee's agreement to provide certain services or meet certain standards.

A third method, which includes elements of both the bid and the negotiation techniques, is that which most communities use to select a cable operator and decide franchise terms. It is the procedure which affords the franchise authority its greatest amount of flexibility. Local officials need not set specifications for each of the many categories of information found in a comprehensive application form (see Section IV), but can allow competing companies to present bids in these areas. This "bid and negotiate" method also has sufficient flexibility to allow for a "narrowing-down" process, by which a large number of applicants is pared down through initial bids, followed by public negotiation with perhaps two or three applicants remaining, and completed with the eventual selection of the franchisee and determination of the franchise terms.

There are no hard and fast lines separating these three franchisee selection methods, nor rules of thumb which can assign a particular method to a specific type of community. However, there are some factors which will influence the decision of which method to choose.

Some states have promulgated comprehensive cable regulations which dictate how cable television franchises are to be awarded. Other states have constitutional or statutory provisions that franchises be nonexclusive, or that franchises be awarded only after a public referendum.

Still other jurisdictions have statutes which affect other aspects of cable TV franchising. Such provisions may establish procedures that must be followed or might affect the substance of franchises, and could thus have an impact upon the entire process. An example of this type of statute is state "sunshine laws," which require certain or all government sessions to be open to the public.

The nature of a local government's study effort may have a bearing upon the franchisee selection method used. The better a community's study of cable, the greater the possibility that this study process will result in a set of recommendations that will need few alterations or adjustments. Put another way, such a thorough study will likely pro-

duce a set of more rigid or nonnegotiable specifications and recommendations. Because of this, perhaps only a few companies will express an interest in the franchise. In this case, bids could be used as a device to determine general franchisee interest, and negotiations might then provide a way to narrow the differences between the system needed to fulfill the expressed demands of the community and the system which the prospective applicants are willing to provide.

In some cases the size of the franchise authority's proposed cable service area will be the determinant in choosing the selection method. Small rural communities, isolated from larger television markets may discover through informal inquiries conducted during the community's study of cable television that only one company is interested in acquiring the town's franchise. In this instance, negotiation would be the only available method of franchisee selection.[1]

A typical situation demanding a negotiated franchising process occurs when the community in question is surrounded or nearly surrounded by a city or group of cities which have franchised the same cable operator. The principal negotiating leverage the government holds in this case is the power to franchise. Generally speaking, that authority is sufficient to establish an atmosphere conducive to fruitful negotiation.

Finally, in communities where, for any number of reasons, cable television promises the possibility of a large return on investments, there will probably be a number of applicants for the franchise. Hence, it may be necessary to use both the bid and the negotiation method.

II. APPLICATION FORM

This section is intended to set forth the various subjects on which franchising authorities may wish to solicit information from franchise applicants, and to indicate what, if anything, the Federal Communications Commission's rules have to say about those subjects. To begin with, however, some general observations should be made about the FCC's cable rules.

[1]In such cases, franchise authorities should make a special effort to attract other applicants for the franchise, before engaging in negotiations with the one interested cable company. The attempt to interest other applicants may give the franchise authority a much wider choice of franchisees and may result in a more competitive atmosphere in which to bargain. Moreover, a genuine, though unsuccessful effort to interest other applicants in the franchise assures that the single applicant is not receiving undue advantage.

Waivers

There are many situations in which a local government can implement an innovative local plan for cable if a waiver of the rules can be secured from the FCC. However, the rules vary with respect to how much change the commission is likely to allow. Some of the rules — for instance, the procedural rule requiring that franchises be awarded in a public proceeding affording due process — are absolute requirements which the commission is unlikely to waive under any conceivable set of circumstances. There are other rules, such as the substantive rules regarding signal carriage, from which it is unlikely to allow much variance. Still other rules establish minimum standards which local governments may exceed by requesting a waiver or by submitting a special showing. An illustration of this is § 76.251, dealing with two-way capacity, channel capacity and access channels. For certain other areas, the commission has established maximums which can be altered without a waiver or a special showing. An example of this category is the construction completion deadline of five years, or the fifteen-year term of the franchise. Finally, there are areas in the rules for which the FCC has set neither minimums nor maximums. Local governments are therefore free to establish whatever requirements they wish and need not justify them to the commission. The rate structure or the choice of the operator are examples of these areas.

Second, a waiver procedure exists, whereby local governments may ask the FCC for changes or alterations in the rules. Waivers may be granted only by the commission (rather than the Cable Television Bureau), which lengthens the time required for the certification process. Theoretically, this power may be delegated to the Cable Bureau, but to date this has not occurred.

In any event, the point that should be clear is that variance from the rules is possible.

Commission officials and personnel have said that a sound program adopted by a local government for cable franchising and development which is not in complete compliance with all of the FCC's rules will be given full and fair consideration. There are not many cases imaginable which would be flatly rejected by the commission if the government has strong justification for requesting more than the FCC requires. The difficulty lies in determining, in the specific case, what constitutes sufficient justification, and there are few precedents yet to shed much light upon the problem. However, any local government that can make a reasonable case for variances from the rules ought to make full use of the waiver process.

Categories of Information

The purpose of the application form is to solicit information on the applicants which will help a franchise authority to select one or more applicants who will provide the best cable service for that community. The federal rules require that local authorities scrutinize the financial, legal, technical and character qualifications of the applicants. In Section IV of this report, suggestions are made as to how local officials might go about requesting that information.

Beyond certain categories of information to which negative responses would be absolutely disqualifying because of FCC requirements, a local government may also impose certain requirements which will be absolutely disqualifying. Examples of the two kinds of disqualifications may illustrate. Under FCC regulations, a broadcast television network may not have financial interest in a cable television system; therefore, if the information submitted by an applicant discloses that the applicant's major shareholder owns more than one per cent of the outstanding voting stock in a television network, that applicant would be disqualified under the federal rules. On the other hand, local franchising authorities may decide that the community will take a very harsh view of applicants holding a significant number of franchises which have not been constructed. Thus, a local government might establish a rule that any applicant will be disqualified if half of its franchises are neglected. That would be a locally-imposed, nonnegotiable disqualification on which the FCC's rules have no bearing.

A third category of information that local franchising authorities may wish to solicit via the application form is negotiable topics about which the franchise authority wants information for the purpose of comparing the offers made by the several applicants.

Standard Information

The following is a list of standard categories of information that should be requested by all franchise authorities of all applicants, with an explanation of why the information should be requested. ("Forms" for soliciting such information are included in a separate section at the back of the report, beginning with p. 31.) This is followed by a list of additional categories under which local officials may wish to elicit information, with an explanation of how the FCC's rules apply to them.

Again, the franchise authority must specifically define "applicant" and "principal" in the appropriate forms.

1. GENERAL INFORMATION (SEE COVERING FORM AND AFFIDAVIT)

Start by asking all applicants to furnish the following information:

— Name
— Address
— Telephone
— Authority of person submitting application to do so on behalf of applicant.

All applicants should also be required to give their sworn statements as to the veracity of information furnished, plus an agreement that later discovery of misrepresentations gives the government an absolute right to revoke the franchise.

2. LEGAL QUALIFICATIONS (SEE FORM A)

(a) Ask whether the applicant, or any stockholder who is an officer or director or who directly or indirectly owns more than one per cent of the outstanding voting stock in applicant, directly or indirectly owns, operates, controls, or has more than one per cent interest in any of the following:

—A national broadcast television network (such as ABC, CBS, or NBC); or

—A television broadcast station whose predicted Grade B contour overlaps in whole or in part the service area of such system or an applicant for a license to operate such a station; or

—A television translator station licensed to the community of the system; or

—A telephone company in its own service area.

An affirmative response to this question must be construed as an absolute disqualification of the applicant, as FCC rules (47 C.F.R. §63.54 and §76.501)[1] prohibit cable system interest in such entities.[2] (Note that terms such as "control" and "interest" are defined and the applicability of this prohibition explained in §76.501.)

---

[1]The FCC's cable television rules appear at 47 CFR §76.1, *et seq.* A reference to "Section 76.251," therefore, is a reference to that section of volume 47 of the Code of Federal Regulations.

[2]Some cross-ownership situations which existed when the FCC's cable rules were adopted in 1972 are the subjects of requests for waivers of the prohibition. Regardless of the outcome of the requests, waivers are unlikely for cross-owned entities created after 1972.

(b) Ask whether applicant is a U.S. citizen. A negative response has impact only if the system operator will, now or in the future, require a license from the FCC. "Applicant" here should be defined in accordance with the provisions of the Communications Act prohibiting aliens, foreign governments, foreign corporations and corporations effectively controlled by foreign nations from holding FCC licenses. 47 U.S.C. §310 (a)(1)-(5).

CHARACTER QUALIFICATIONS
(SEE FORM B, FORMS C1-2 and FORM D)

(a) Ask whether the applicant (defined to include a parent corporation) or any principal (defined to include dominant, or potentially dominant, stock ownership interests) in applicant has ever been convicted in a criminal proceeding in which any of the following offenses (felonies or misdemeanors) were charged:

—Fraud
—Embezzlement
—Tax evasion
—Bribery
—Extortion
—Jury tampering
—Obstruction of justice (or other misconduct affecting public or judicial officer's performance of their official duties)
—False/misleading advertising
—Perjury
—Anti-trust violations (state and federal)
—Violations of FCC regulations
—Conspiracy to commit any of the foregoing offenses.

If the answer is yes, specifics (date, court, sentence or fine and any other relevant explanatory information) should be sought.

The purpose of seeking this information is not necessarily to disqualify, but to assure that such disclosures are made to the local government. Public officials are then in a position to assess whether past convictions of these offenses should disqualify. For example, a long history of fraudulent conduct might well be a disqualifying factor, whereas a single instance of tax evasion by a single principal might not. In any event, that is for the local government to judge. Also, franchising authorities might wish to add offenses not considered "business crimes."

(b) Ask whether the applicant or any principal has ever been a party to a civil proceeding in which it was held or is now a party to a proceeding for any of the following:

—Unfair or anticompetitive business practices
—Anti-trust violations (state and federal) including instances in which consent decrees resulted
—Violations of securities laws (state and federal)
—False/misleading advertising.

If an affirmative response is given, specifics should be sought.

As with the previous question, the purpose of asking about such activities is to disclose all relevant information about the applicants. The disqualifying impact of "yes" answers should be determined by the local franchise authority.

(c) Ask whether the applicant has ever had a business license (defined to include FCC licenses, alcoholic beverage and restaurant licenses, etc.) revoked, suspended or the renewal thereof denied or is a party to a proceeding that may result in same. If the answer is yes, specifics should be sought.

Again, the purpose of asking this question is to disclose the past business practices of the applicant. Disqualifying impact is up to the franchise authority.

(d) In order to apprise the local government of the applicants' business practices elsewhere, and, specifically, to disclose any "sluggish" start-up and construction practices, the applicant should be asked to indicate the following information for every community in which applicant or any principal (or a parent corporation or another subsidiary of the parent) was awarded a cable franchise within the previous five years. Local officials should also be in a position to check the applicant's track record by obtaining opinions about its performance and reputation from public officials in any of the communities in which applicant operates a cable system.

—Name of system
—Name of community (and address)
—Number of subscribers
—Date of award of franchise
—Date on which local franchise required construction to commence
—Date construction commenced
—Indication in terms of specific dates of the time interval between the beginning of construction and the date service was offered. Where construction was completed and service offered by sections, show interval between *initial* construction date and

the offering of service for *each* section.
—Percentage of construction presently completed (measured by total number of homes passed by energized plant compared with potential; also by section, if applicable)
—Dates on which certificate of compliance was applied for and granted by FCC
—Name and address of chief executive officer, city/county attorney and any other governmental officer having cable television responsibility in the community.

(e) An effort should be made to learn something of the quality of work of each applicant. This may involve detailed examination of other systems. As part of a screening process, to identify where and how to proceed in this examination, applicants should be required to list at least one, but no more than four of the systems listed in (d) above (and Form C1) which would be made available for inspection or evidence of the applicants' qualifications and experience in cable television operations. One system listed should be under construction to demonstrate the applicant's construction pace and technique. A second system listed should demonstrate the applicant's experience in community service. A third system listed should be an older system in order to demonstrate the applicant's skill in maintaining technical quality. Applicants should list any other system factors which demonstrate support of their qualifications. Applicants should also include a copy of the most recent proof of performance test for each system, required to be conducted by FCC rules (§76.601).

The following information should be requested for each system:

—Name of system
—Name of community (and address)
—Date of award of franchise
—Date construction commenced (if turnkey, name of construction company)
—Percentage of construction completed
—Date certificate of compliance granted
—Number of subscribers (present and projected in five years)
—Homes passed by cable (present and projected in five years)
—Strand or route miles of plant presently in place (aerial and underground)
—Hours of origination programming per week (automated and nonautomated)
—Number of channels (Class I (broadcast) and Class II (origination))
—Residential rates (installation and monthly).

(f) In order to determine whether the applicant has a history of trafficking in franchises, the applicant or any principal should be requested to indicate, for every community for which it (or its parent or another subsidiary of the parent) received a cable television franchise and subsequently disposed of all or a majority of its interest, the following:

—Name of system
—Community
—Date of franchise award
—Date(s) and reason for and manner of disposition of interest.

4. FINANCIAL QUALIFICATIONS

It is suggested that a series of forms be utilized to solicit financial information. The forms are outlined below, with explanations of how to read the information elicited.

(a) Ownership Information (SEE FORM E AND FORM F)

The principal types of applicants are individuals, corporations, partnerships, joint ventures and unincorporated associations. The following in Form E should be completed by all such applicants:

—Name
—Address
—Nature of partnership interest or name of office held
—Principal profession or occupation
—Name and address of employer
—Number of shares of each class of stock or ownership interest (including stock options and partnership options)
—Percentage of ownership of partnership, voting stock or equity interest.

Form E should also be completed by all principal and beneficial holders of 10 per cent[1] or more of the stock or other ownership interests of the applicant.

In many cases, a local applicant will have nonlocal backing or, in rarer cases, somewhat concealed

[1]The specific percentage, representing the smallest ownership interest into which the franchise authority will inquire further, is obviously one which franchising authorities should establish from themselves after careful consideration. The use of "10 per cent" here is arbitrary.

local backing. It is important that a local government know the true ownership of the applicant with which it is dealing.[1] Therefore, each holder of 10 per cent or more of the stock or other ownership interest of the applicant should in turn list all holders of 10 per cent or more of its *own stock*, by completing Form F which asks the following:

—Name and address
—Profession, occupation or business
—Employer and address
—Percentage of ownership of X
—Number of shares of each class of stock or ownership interest of X.

This process elicits multiple levels of ownership. Therefore, each answer to Form F should be reexamined. Should responsible officials feel that further levels of ownership exist and more information is required, a new Form F can be required of each holder of 10 per cent or more of a corporate entity named in the original Form F.

This somewhat complex process might be necessary under the following hypothetical circumstances:

(1) A community's Form E's showed three owners of an applicant:

Form E

Joe Doe — 5%
Mary Smith — 5%
J-S Industries — 90%

(2) The community would then require a Form F of J-S industries — which owns more than 10% of the applicant. Form F details ownership of more than 10% of J-S Industries.

Form F: J-S Industries Owners

John Doe — 10%
Mary Smith — 10%
DM Industries — 80%

[1]Alternately, a franchise authority may require *all* local owners, in any amount, to be disclosed by requiring completion of Form F by anyone who resides or maintains an office within the locality or the state.

(3) This Form F reveals that John Doe and Mary Smith own more of the applicant than Form E states. The community might then want to require a Form F of DM Industries.

Form F: DM Industries

John Doe — 50%
Mary Smith — 50%

Under this albeit unlikely set of circumstances, the community has learned a great deal, i.e., that John Doe and Mary Smith control the applicant corporation.

(b) Stock Ownership (SEE FORM G)

Form G should be completed by corporate applicants. Stock information should include the following information:

—Class
—Par value
—Vote per share
—Shares authorized
—Shares issued
—Shares subscribed
—Total number of stockholders.

Applicants should also be required to answer the following questions:

1) Is applicant a publicly held corporation as defined by the rules and regulations of the Securities and Exchange Commission?

2) Does applicant have any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency? If yes, submit a statement of (a) the nature of such securities, (b) the face or par value, (c) the number of units authorized, (d) the number of units issued and outstanding, (e) the number of units, if any, proposed to be issued, (f) the conditions of contingency upon which securities may be voted.

3) Is applicant corporation directly or indirectly controlled by another corporation or legal entity? If yes, explain.

(c) Pro Forma Projections (SEE FORMS H1 TO H8)

All applicants should be required to provide ten-year projections[1] of:

—System growth and revenue statement
—Income statement
—Sources and uses of funds
—Capital expenditures
—Payroll
—Expenses
—Depreciation
—Services purchased from parent corporation.

The main value of pro forma projections is what they yield as historical documents. If the successful applicant is required to complete an annual pro forma and it is compared with actual experience at the end of each year, it is possible to follow the system's costs and expenses. If the local government wants to maintain the same subscriber rate for several years, this tends to limit unwarranted increases in rates, especially when, in year one or two, the operator may claim to be losing money. The pro forma projection would indicate whether or not these losses were expected and normal.

Finally, the pro formas can be used to compare the applicants, particularly with respect to the reasonableness of projections. If, for instance, applicant X suggested an ultimate penetration of 70 per cent but applicant Y 30 per cent, franchising officials might want to ask further questions about the basis for the penetration estimates. Through a careful procedure of documenting their pro formas, the applicants can be compared as to the reasonableness of their estimates. Thus, the pro forma can serve as an estimate of the financial viability of the proposed system and also as a means of validating the applicant's estimate.

Unfortunately, in some cases, local governments base cable franchising decisions only upon gross revenues and the franchise fee. The easiest way an applicant can boost the projected franchise fee is by increasing the expected number of subscribers. Therefore, applicants sometimes exaggerate penetration in order to balloon the franchise fee. To correct such exaggerations, local officials may wish to use one of the available standard economic models, which are statistical, computer-assisted tools for forecasting future conditions.[2] Through the use of such a model, the franchise authority may verify the operator's projections by comparison.

(d) Financial Strength of Applicants (SEE FORMS I-1 AND I-2, FORM J AND FORM K)

For any applicant in which a principal is an MSO,[3] responsible officials should determine:

—Miles of plant committed elsewhere for the next five years and capital required for planned construction elsewhere (Forms I-1 and I-2)

—Projected sources of capital and debt-to-equity ratio (actual and projected) (Form J)

—Times-interest-earned ratio (actual and projected) (Form K)

The information requested in Forms I-1 and I-2 is designed to reveal the construction and capital commitments the applicant has made in other communities. These forms will provide a record of how the MSO plans to spend money over the next five years. It may indicate whether the MSO would be overcommitting its resources if this franchise were awarded. Once it is known what has to be spent, the sources of the capital should be ascertained. It is appropriate to ask the MSO to specify the sources of capital that are needed to construct the required plant over the next five years. This would determine dependence upon outside financing sources.

Two ways of measuring the impact of sources of capital upon corporate vitality are readily available. These are: debt-to-equity and times-interest-earned ratio. Franchising authorities should ask for this information both for the previous five years (based upon actual audited statements, such as those which a publicly held corporation must file with the Securities and Exchange Commission), and for the next five years (based upon company estimates of required capital outlays in new and rebuilt plant).

---

[1]The specific form and content of the pro forma recommended in Form H is consistent with the National Cable Television Association's "Accounting Manual for Cable Television" (prepared by the Budget and Audit Committee of the National Cable Television Association, Washington, D.C., November 1967).

[2]To learn which organization provide such services, contact the Cable Television Information Center, 2100 M Street, N.W., Washington, D.C. 20037, Att: Analysis Group.

[3]"MSO" means multiple system operator. In this report, multiple means two or more cable systems.

The debt-to-equity ratio measures the percentage of total funds that have been provided by creditors, compared to current liabilities and all bonds. This ratio is important to governmental officials if, and only if, large upward changes in this ratio are observed. For example, if the ratio had remained at 2:1 for the past five years but suddenly in years 2 to 5 of the franchise it jumps to 7:1, there would be a legitimate concern regarding the capital structure of the corporation.

The times-interest-earned ratio is determined by dividing earnings before interest and taxes (i.e., gross earnings) by the interest charges. The times-interest-earned ratio measures the extent to which earnings can decline or interest payments can be increased without leaving the company unable to meet annual costs. Failure to meet this obligation can bring forth legal action by creditors. Of course, the ratio should never drop below one, and should, in fact, be much higher. A low ratio reinforces the conclusion based upon a high debt-to-equity ratio that the company is likely to face some difficulties in raising additional funds from debt sources.

Officials should also examine existing unused lines of credit that the MSO has with banks, insurance companies, equipment manufacturers, etc. When the lines of credit (which are actual loans that have been negotiated but currently remain unused and thus available for system construction) are compared with the operator's projected long-term debt requirements for other systems, the franchise authority is in a position to determine whether the magnitude of the new loans that must be secured during this time frame is so large as to preclude financing this system. Authorities should be concerned if major increases in the magnitude of long-term debt are required in order to fulfill long-term construction commitments.

However, when evaluating the financial strength of local groups—entities which were organized only to bid on this specific franchise, and who lack MSO backing—franchising officials will realize that most of the preceding forms are not applicable. A local group would not have the historical cash flow from existing systems to justify its financial feasibility, nor would it have capital expenditure commitments in unbuilt systems. Thus, the preceding group of forms pertaining to MSO's can be narrowed to the following information:

—Construction schedule
—Capital required
—Sources of capital
—Written assurance regarding sources of capital.

Written assurances regarding sources of capital in the case of local applications are not so meaningful or significant as an analysis of existing lines of credit. The written assurance is, in general, a letter from long-term lenders stating that should the local group be awarded a franchise, the lending institution will loan the group X dollars in order to build the cable system. It should be noted however, that the letter does *not* state that the company already has the loan but rather, upon award of franchise, the bank or other institutions *may* lend it the money. In other words, such letters are not firm assurances of a loan or a line of credit, and this should be understood by the government.

These letters can be made into binding commitments from lending institutions, but this requires that the applicant pay a fee — usually equal to one per cent of the loan — to the institution. In most cases, this can be a very expensive undertaking, especially if the loan applicant is not awarded the franchise.

Thus, while these letters are found in almost all applications, they are not very meaningful. Greater reliance should be placed upon the credibility of the applicants than upon written assurances of sources of capital.

Local Options

1. FRANCHISE TERRITORY (SEE FORM L)

The Federal Communications Commission's cable television rules only provide that it is up to the franchise authority to delineate the franchise territory, i.e., the area within which cable service will be available to subscribers. More often than not, in the past, if only one franchise was to be awarded, the franchise area has been the territorial extent of the jurisdiction awarding the franchise; if several franchises were awarded, that entire territory was divided among them. It has not been common practice to award a franchise for only one part of a community, with no expectation of awarding others. However, the practice is not unheard of, and franchising authorities should be wary of applicants who want franchises only for the more densely populated—and therefore more lucrative—parts of the community. To derive an average population density that will support an economically viable cable system, some of the more dense areas should be combined with those that are less dense in order to make cable service more widely available.

On this subject, the FCC has stated:

> Another matter uniquely within the competence of local authorities is the delineation of franchise areas. We emphasize that provision must be made for cable service to develop equitably and reasonably in all parts of the community. A plan that would bring cable only to the more affluent parts of a city, ignoring the poorer areas, simply could not stand. No broadcast signals would be authorized under such circumstances. While it is obvious that a franchisee cannot build everywhere at once within a designated franchise area, provision must be made that he develop service reasonably and equitably. There are a variety of ways to divide up communities; the matter is one for local judgment. *Cable Television Report and Order,* 36 FCC 2d 141, 205, ¶180 (1972)[1].

The commission has further elaborated on this subject in its *Clarification of Rules and Notice of Proposed Rulemaking,* 46 FCC 2d 175, 39 Fed. Reg. 14288 (1974),[2] as follows:

> It was our intent that all parts of a franchise area that could reasonably be wired would be wired. . . .
>
> Clearly, this problem can best be dealt with at the local level since every community presents unique demographic vagaries. Some over-all guidelines, however, should be set out. Obviously, the ideal case is where a franchisee is required to wire the entire franchise area. We are aware, however, that many franchises are being granted that do not encompass the entire political subdivision of the grantor. Such grants are appropriate so long as they are not used as a device to deprive certain portions of the population of service. In some cases, cities decide to grant multiple franchises to different franchisees for various discrete sections of the franchise area. This is acceptable so long as the ultimate result is complete coverage of the area. Clearly, if the area was subdivided in such a way that one area would be highly lucrative while another was marginal and not sought after, the result would be "cream-skimming." This would be unacceptable. Other jurisdictions define the franchise area by way of a so-called "line extension" clause, that is where the cable operator is only required to wire those parts of the political subdivision that contain a specified number of homes per mile measured on some stated formula or base. The numbers we have seen range generally from 30 to 60 homes per mile. In some cases, we acknowledge such a formula is justified. The potential subscribership in a particular community may be marginal in terms of system viability, and the extension of lines might spell the difference between success and failure of the system. In other cases, however, systems have apparently sought to maximize profits by only serving densely populated areas even though an averaging of the density figures to include those miles of cable plant in the sparsely populated areas indicated that the system would still be viable.
>
> A middle course has been adopted in some instances whereby a formula is established in the franchise so that if outlying pockets of viewers wish the cable extended to them they must pay the specified costs involved in extending the trunk line.
>
> We can see reasonable justifications in all of these approaches. *Clarification,* ¶¶59 and 62.

Thus, as the *Clarification* makes clear, the FCC feels that the entire franchise area should be wired if possible. However, a subsequent ruling regarding line extension policies, *Report and Order,* FCC 74-1384, 50 FCC 2d 61 (Docket No. 20020) (1974), has added a provision to this requirement. The provision states that a franchise containing a construction policy requiring less than complete wiring of the franchise area can be adopted, but only after a full public proceeding, including specific notice to all interested parties that such a policy is being considered. Under this provision, the commission has not established specific procedures for the local authority to follow, but has left choice of the method of public notification to the franchising authority. The commission said:

> [W]e are concerned that the ideal of service to the entire franchise area has been fully considered by the franchising authority. If such an arrangement has been found to be feasible, it should be provided for in the franchise. If extension of service to the entire area has been found to be impractical by rational, logical standards, a line extension policy should then be established. ... [W]e are adopting a minor amendment of Section 76.31(a)(2) to insure that the public is specifically notified of and given the opportunity to participate in public

[1]Hereafter cited as *Report and Order.*

[2]Hereafter cited as *Clarification.*

proceedings developing line extension policies. *Id.* at ¶¶9, 10.

However franchise areas are defined by the local authority, the applicant's plan for extending service to each part of the franchise territory is a matter of importance to the community. A company will normally extend service into an area only when it is expected that revenues will exceed costs. The franchise authority should require each applicant to disclose in detail all plans and formulas for extending service. A convenient way to do so is to require each applicant to submit a large-scale map of the franchise area, annotated to show:

—Areas where every home will have access to service during the first five years of construction, designated by year

—Areas in which the applicant will not provide service unless housing densities increase, or special arrangements are made to compensate the applicant for the cost of extending service.

2. CONSTRUCTION TIMETABLE
(SEE FORM M)

The purpose of establishing a timetable for constructing the cable system is, of course, to assure that it is built as soon as possible after the franchise is awarded. Cable television franchises have been known to "lie fallow" for years — a practice which public officials will wish to guard against.

Section 76.31 (a)(2) of the commission's rules, which deals with the construction timetable, provides that:

> The franchisee shall accomplish significant construction within one (1) year after receiving Commission certification, and shall thereafter reasonably make cable service available to a substantial percentage of its franchise area each year, such percentage to be determined by the franchising authority. . . .

The FCC has indicated that the "substantial percentage" mentioned in the rule will be satisfied if energized trunk cable is extended to at least 20 per cent of the franchise area each year, with the extension to begin within one year after the commission issues its certificate of compliance. The 20 per cent figure is not totally inflexible, and the commission has recognized that local circumstances may vary.

Therefore, franchising authorities may require construction at a faster pace than 20 per cent of the area per year. This is a requirement that may be exceeded without any further FCC approval, so long as the timetable provides for (1) significant construction in the first year and (2) extension of service to a substantial percentage of the franchise area each succeeding year, with a completion date established by the franchise authority.

3. OVERHEAD VS. UNDERGROUND CONSTRUCTION
(SEE FORM M)

There is no FCC rule on this subject. A franchise authority is therefore free to specify where the system will be required to lay its lines underground. Since the general practice is overhead construction, requirements for undergrounding should be set forth by the franchise authority when it requests applications. Franchising officials should bear in mind that underground construction is generally far more costly than overhead, so undergrounding requirements should not be lightly imposed.

4. CHANNEL CAPACITY AND SYSTEM DESIGN
(SEE FORM N)

The FCC's rules require that a cable television system located in a designated major television market have a "minimum" channel capacity of "at least 120 MHz of bandwidth (the equivalent of 20 television broadcast channels) available for immediate or potential use." §76.251(a)(1). However, the rules for major market systems also require that for every Class I (broadcast) channel that is utilized, there must be capability of providing an additional channel for Class II and Class III (nonbroadcast) signals. §76.251(a)(2). Stated more simply, a major market system must have the number of channels equal to whichever is greater: 20 channels, or twice the number of broadcast signals carried.

Furthermore, the commission has stated that it views 20 channels as a maximum which may not be exceeded by franchising authorities without a waiver. It has stated:

> The question has arisen whether we have preempted the area of channel capacity so that local governmental entities could not require more than twenty channel capacity or more than required under the equal bandwidth rule, §76.251(a)(2). We believe that our requirement for expansion of channel capacity will insure that cable systems will be constructed with sufficient capacity. However, if a local governmental entity considers that greater channel capacity is needed than is

required under the rules, we would not foreclose a system from meeting local requirements upon a demonstration of need for such channel capacity and the system's ability to provide it. *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326 (1972),[1] footnote 25.

Thus, a showing of need for greater capacity than 20 channel technology as required by the FCC may be made by the franchise authority. Because the system operator's ability to provide greater capacity must also be part of that showing, the application form should request the applicant's assent to providing the desired capacity as well as an agreement to submit appropriate data demonstrating its ability to meet the requirement as part of the certification process.

The commission has reaffirmed its 20-channel "minimum/maximum" rule as follows:

> Questions arising out of our channel capacity rules (§76.251(a)(1)) also indicate that clarification is necessary. Our efforts to establish minimum/maximum channel capacity requirements were based on a study of the existing technology at the time of the adoption of those rules. We were attempting to indicate to the industry that they must have sufficient channel capacity to meet foreseeable future demands, and, at the same time, we were cautioning franchising authorities that requiring excessive technological capacity was detrimental to our overall program. A "20-channel" system, in essence, requires construction that is sufficient for any currently foreseeable demand; that is, single cable with converter, dual cable, or eventually dual cable with converter. We continue to be of the opinion that this is sufficient. We note that some communities have contemplated requiring massive extra bandwidth provisions, such as operational capacity for 120 video channels. The present need or value of such excess has yet to be proved. *Clarification*, ¶16.

The FCC has not removed the possibility that a local government may prove the need for more than its "minium/maximum," but has warned against requiring "massive extra bandwidth."

One final comment concerning channel capacity need be made. Much of the modern equipment currently being proposed for new cable systems will, as a matter of course, supply capacities greater than 20 channels. The commission has stated that when a cable company normally installs equipment providing this increased capacity, the requirement for a demonstration of need for the greater capacity is waived.[2] Moreover, as the *Clarification* makes clear, local authorities may require "up to" dual trunk cable capacity without a special justification, so the number of channels to be installed is not a matter on which to focus. Rather, local officials should concentrate upon design which will ultimately yield sufficient capacity.

In addition to requiring technical information about other cable systems which the applicant may own, the franchise authority should also request detailed information about the technical characteristics of the system design proposed for the community. Included in this information would be descriptions of headend, antennae, studio and program origination equipment, proposed locations of such equipment and material on FM radio signal carriage capabilities (if applicable) and interactive (two-way) capabilities.

Finally, the franchise authority, if it is not establishing its own technical standards and construction specifications,[3] should ask whether the proposed system will meet FCC technical standards. Additionally, descriptions of the applicants' proposed testing programs should be requested, including information on testing procedures, test equipment to be employed and the number and location of testing points to be used.

It is suggested that franchising authorities seek engineering expertise when evaluating this latter technical design information proposed by applicants.

5. TWO-WAY CAPACITY
(SEE FORM N)

The FCC's rules for the major markets require cable TV systems to "maintain a plant having tech-

[1] Hereafter cited as *Reconsideration*.

[2] *Cleveland Area TV, Inc.*, 40 FCC 2d 673 (1973).

[3] The Cable Television Information Center sets forth cable television construction and performance standards in its publication "Technical Standards and Specifications" (1973). The standards are more exacting than those of the FCC, although they are not difficult for most cable systems to meet. In a broad preemption of locally adopted technical standards, *Report and Order*, FCC 74-1168, 49 FCC 2d 470 (Docket No. 20018) (1974), certain portions of the center's standards (subsections B and C) have been preempted. However, there is a waiver procedure available, and the center's standards may be adopted and implemented if the franchising authority wishes to demonstrate local need for the higher standards and to pursue a waiver on that basis.

nical capacity for nonvoice return communications." §76.251(a)(3). In its *Report and Order* that accompanied the rules, the commission stated:

> We have decided to require that there be built into cable systems the capacity for return communication on at least a non-voice basis. Such construction is now demonstrably feasible. Two-way communication, even rudimentary in nature, can be useful in a number of ways — for surveys, marketing service, burglar alarm devices, educational feed-back, to name a few.
>
> We are not now requiring cable systems to install necessary return communication devices at each subscriber terminal. Such a requirement is premature in this early stage of cable's evolution. It will be sufficient for now that each cable system be constructed with the potential of eventually providing return communication without having to engage in time-consuming and costly system rebuilding. This requirement will be met if a new system is constructed either with the necessary auxiliary equipment (amplifiers and passive devices) or with equipment that could easily be altered to provide return service. When offered, activation of the return service must always be at the subscriber's option. ¶¶128, 129.

The commission subsequently stated that "this rule does not require that the cable system be operational in the return mode." *Clarification*, ¶22. The objective is "to make sure that new systems being built will be able to meet all present and foreseeable future service obligations without the need for significant rebuilding or delay." *Id.* Most manufacturers of cable equipment describe their products as easily converted for two-way capacity, but conversion of a complete cable system may be very difficult and costly nonetheless. Thus, it is appropriate and useful for franchising authorities to ask applicants to describe in detail what will be involved in converting the system to two-way, and when they expect to make the conversion.

As to locally imposed requirements in this area, the FCC has said:

> In some cases, we have noted that franchising authorities are requiring the immediate operational installation of two-way facilities. Before a certificate of compliance is granted in any such case, we require a showing of the intended use of such facilities and a showing that such a requirement will not adversely affect the system's viability or otherwise inhibit it from complying with the federal goal of a nationwide cable communications grid. *Id.*

6. CHANNEL USES (SEE FORM O)

All cable system operators are permitted by the FCC to "cablecast" or originate programming. Amending its former rule, the commission no longer requires that the cable operator originate programming,[1] but the operator must supply a minimum amount of cable equipment (camera, video tape recorder, TV monitor, etc.) and permit the presentation of non-operator produced programming. The local authority may require an origination channel (although the FCC strongly advises against such a requirement), but cannot, in the commission's words, "mandate the manner of operation of that channel."[2]

The franchise authority has a legitimate interest in inquiring into the extent of applicants' plans for programming, as an indication of the applicant's commitment to local program origination. Applicants might be required to describe in detail what signals will be carried, plans for pay television and other recorded programming, and the specific kinds of local programming which will be purchased or produced locally. They may also be asked to indicate on how many channels they will originate, and what the budget is for origination. Commitments as to the size of the origination budget and the studio facilities to be used are the single most important items to seek in ascertaining the extent of the applicants' commitment to program origination.

Local franchising authorities may also look to other communities where applicants have operating systems to determine whether prior commitments to local program origination have been pursued or abandoned. Officials should bear in mind that the end product of the inquiry into local origination plans—the content of the programming on the local channel(s)—is a matter that is entirely within the operator's control, and efforts to interfere with programming judgments should be eschewed by the government.

Moreover, franchising authorities should impose program category requirements with great caution.

---

[1] Related to this is the widely discussed issue of a "separations policy," whereby the system owner would be precluded from controlling any programming carried on the system, leaving all programming to be done by lessees of channels who are not affiliated with the system owner.

[2] *Report and Order*, FCC 74-1279, 49 FCC 2d 1090 (Docket No. 19988) (1974).

It is strongly recommended that applicants be required to indicate current plans and objectives, but be afforded a considerable measure of flexibility in implementing them. It is simply too early in the history of cable programming to know whether plans for cable networks will materialize, whether existing production capability will be an economically feasible programming source for cable systems to tap, whether new production sources for cable programming will spring up and to what extent satellites will provide an economical means of transmitting programming for cable systems. Given all of these unknowns, it is unwise to make hard and fast judgments as to what sorts of programs—and in what quantities—should be required in the public interest. Hopefully, the system operator will have freedom to experiment with different types of programs in order to ascertain the community's programming desires, produce such programs and compete with broadcast programming for an audience.

7. SIGNAL CARRIAGE (SEE FORM O)

At the application stage of the selection process, the franchise authority should ascertain what broadcast signals will be carried. In many cases, the FCC's rules permit the system operator a choice as to some categories of signals. Franchising officials may wish, for example, to assure that the operator will carry a state-operated, noncommercial educational television station, which any system has the option to carry. Or, where the commission's signal carriage rules permit a choice as to which distant signals will be carried, local authorities may wish to have applicants indicate what choices they will make. Officials should note, however, that there is usually very little that they can do to alter the complement of broadcast signals permitted under the FCC's signal carriage rules.

There is however, one exception to this caveat. The FCC's "leapfrogging" rules are designed to prevent cable systems from skipping over closer TV stations in favor of those located farther away that are usually in the larger markets and carry more attractive programming. In some cases, these rules have called for carriage of a closer station that is in a different state, but precluded carriage of an in-state station, with which the cable system's community identifies more closely. It has been recommended to the commission that "when there is a joint petition by the cable operator and the franchising authority for a waiver of the leapfrogging rules based on a showing of community interest, the Commission should give additional weight to such petitions in considering the waiver request." *Federal-State/Local Advisory Committee, Steering Committee Report,* Issue 19. The FCC has endorsed this position:

> We agree with this position and have adopted it in some cases presented to us. (See Commission on Cable Television of the State of New York, 43 FCC 2d 826, FCC 73-1148, CSR-342). We intend to continue investigating such waiver requests on an ad hoc basis, and, as noted in the above-cited case, as we gain more experience in this area, we may consider appropriate amendments of our leapfrogging rules (§76.59, 61 et seq.) to accommodate the carriage of in-state signals in some or all situations. *Clarification,* ¶9.

The leapfrogging rules have not yet been amended. However, the commission has repeatedly affirmed its prerogative to grant waivers of the rules in appropriate cases. The importance of in-state programming, as opposed to nearer out-of-state programming, has been consistently recognized, and in those cases where the distance differential between the broadcast stations involved was slight, the FCC has attempted to ascertain which station would more likely serve the local interest. (In *Fairfield Cablevision Associates,* FCC 74-1243, 49 FCC 2d 939 (1974), the difference was .82 miles.)

8. LEASED ACCESS CHANNELS (SEE FORM P)

The FCC requires that those portions of a cable system's capacity that are not devoted to carriage of broadcast signals, designated access channels and operator-originated programming be made available for lease. Section 76.251(a)(7) states that:

> Having satisfied the requirements of subparagraphs (4), (5) and (6) of this paragraph for specially designated access channels, such system shall offer other portions of its non-broadcast bandwidth, including unused portions of the specially designated channels, for leased access services. However, these leased channel operations shall be undertaken with the express understanding that they are subject to displacement if there is a demand to use the channels for their specially designated purposes. On at least one of the leased channels, priority shall be given part-time users.

This requirement was explained by the commission as follows:

> In addition to the designated channels and broadcast channels, cable systems shall make available for leased use the remainder of the required bandwidth and any other available bandwidth (e.g., if a channel carrying broadcast programming is required to be blacked out because of our exclusivity rules or is otherwise not in use, that channel may also be used for leased access purposes). Additionally, to the extent that the public, education, and government access channels are not being used, these operations may also be used for leased operation. But such operations may only be undertaken on the express condition that they are subject to immediate displacement if there is demand to use the channel for the dedicated purpose. *Report and Order*, ¶125.

If operation of the leased access channels is to be carried out in a manner other than as provided in the foregoing, a waiver will be required.

However, a franchise authority having a particular interest in the use of leased access channels may ask applicants to disclose their plans for operating the leased access channels. Since operating rules for such channels must be devised by system operators [see §76.251(1)(7) and (11)(iii)], the franchise authority is free to ask to review them in advance of granting the franchise. If this is done, responsible officials may wish to ask that rates for the use of leased channels be specified. If the administration of the channels or the operating rules will depart from the FCC's rules, a "specific authorization" from the commission will be required, pursuant to §76.251(a)(11)(iii).

However, the FCC is unlikely to permit much—if any—control over leased channels to be exercised by local franchise authorities. The commission has also declared flatly that it has preempted local franchise authorities from regulating leased channel rates. *Clarification*, ¶¶32-35. It has opted for "market place experimentation," but has warned that "all parties must be given access to the leased channels at rates not designed to prohibit entry ... especially ... in the area of pay cable ... . [A]buse, particularly of leased channel access, will surely result in far more restrictive regulation." *Id.* at ¶34. Thus, the FCC has indicated that it is likely to permit little in the way of specific authorizations departing from its guidelines.

Nevertheless, there is one point with which the commission would be unlikely to disagree, and which may not even constitute a departure from the rules warranting a specific authorization. Despite the FCC's warnings that it will put a stop to actions that restrict access, there is currently no mechanism for it actually to do so. Thus, the center recommends that users of the leased channels be given a legal right to some redress—perhaps judicial review—should they encounter arbitrary access restrictions. This might be accomplished by explicitly making leased channel users third party beneficiaries of the franchise contract, thus conferring upon them standing to commence a legal proceeding in court. Of course, the conferring of standing is a matter as to which state laws differ, so the franchise authority's choice of such a mechanism should be guided accordingly.

9. ADMINISTRATION OF DESIGNATED ACCESS CHANNELS (SEE FORM P)

The FCC's rules give the cable system operator responsibility for administering the public and educational access channels. That is not the case, however, with the local government access channel.

Section 76.251(a)(9) provides that the operator "shall exercise no control over program content" on the access channels, but goes on to provide that "this limitation shall not prevent it from taking appropriate steps to insure compliance with the operating rules described in paragraph (a)(11)." Paragraph (a)(11) deals with public and educational (and leased) access channels, not with local government access channels. Thus, the only applicable regulation regarding administration of the local government access channel is the prohibition on the operator's exercising any program content control.

With regard to public and educational access channels, §§76.251(a)(11)(i) and (ii) require the operator to establish operating rules which afford access to users and proscribe certain kinds of programming. The rules provide:

> (i) For the public access channel(s), such system shall establish rules requiring first-come nondiscriminatory access: prohibiting the presentation of: Any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter (modeled after the prohibitions in §§76.213 and 76.215, respectively); and permitting public inspection of a complete

record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.

(ii) For the educational access channel(s), such system shall establish rules prohibiting the presentation of: Any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and obscene or indecent matter (modeled after the prohibitions in §§76.213 and 76.215, respectively); and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.

Paragraph (a)(11)(iv) further provides:

The operating rules governing public access, educational, and leased channels shall be filed with the Commission within 90 days after a system first activates any such channels, and shall be available for public inspection as provided in Section 76.305(b). Except on specific authorization, or with respect to the operation of the local government access channel, no local entity shall prescribe any other rules concerning the number or manner of operation of access channels; however, franchise specifications concerning the number of such channels for systems in operation prior to March 31, 1972 shall continue in effect.

Thus, by giving operators the responsibility for establishing, filing and enforcing operating rules, the commission has also authorized them to administer the public and educational access channels. (As pointed out previously, this conclusion does not apply to the local government access channel.)

However, the FCC has explicitly encouraged other approaches to access channel administration. In §76.251 (a)(11)(iv) quoted above, it prohibited local entities from prescribing any rules other than those set forth by the commission concerning the number or manner of operation of access channels, "except on specific authorization." In the *Report and Order*, the commission stated:

Elaborate suggestions have been made for comprehensive community control plans such as neighborhood origination centers and neighborhood councils to oversee access channels. Here again the Commission will encourage experimentation rather than trying to impose a more formal structure at this time. ¶144.

To draw some conclusions from the foregoing, franchising authorities may ask applicants to submit their plans for administration of the access channels as contemplated by FCC rules. On the other hand, authorities may devise a plan to lodge responsibility for administering access channels in a body other than the operator (a course which will require a waiver).

In the first case, the franchise authority may simply review the proposed operating rules and need not contemplate obtaining from the FCC a specific authorization to depart from the rules. It is suggested that local officials encourage applicants to include two minimal safeguards in these operating rules. First, persons and organizations having a right of access should be described in the rules in a way that will, to the extent possible, remove from the operator the opportunity to act arbitrarily or discriminatorily in granting or denying access. Second, persons who consider themselves to have been denied access arbitrarily or who feel that their programming has been censored by the operator in disregard of the FCC's rules, should be afforded an opportunity to appeal such decisions to another body, be it the franchise authority, a court or a panel of appropriate representatives convened for the sole purpose of ruling on such appeals.

In the second case, where the franchise authority wishes to take responsibility for access channel administration away from the operator and lodge it elsewhere, it may follow one of two courses. The first is to outline its objectives and ask applicants to submit specific plans to implement the objectives. The second course would be for the authority to prepare the plan in all its specifics and ask applicants simply to indicate consent to it. In both instances, the plan must be justified to the commission in the certification process.

10. PRODUCTION FACILITIES AND "EXTRA" SERVICES (SEE FORM P)

Cable television systems in the top 100 markets, which must furnish "designated" access channels (public, educational and local government access channels) must provide "at least the minimal equipment and facilities necessary for the production of programming for [the public access] channel." §72.251(a)(4). Also, beginning on January 1, 1976,

all systems with 3,500 or more subscribers and all conglomerates of systems that are commonly owned and "technically integrated" (connected by a local cable or microwave interconnection) with 3,500 or more subscribers are required to have equipment available for local production and presentation of cablecast programs. The operator must permit local non-operator production and presentation of such programs. §76.253(a). If the cable system, either voluntarily or pursuant to §76.253(a), has equipment available it must allow the equipment to be used for "local programming designed to inform the public on controversial issues of public importance," and cannot exercise any control over the content of programs other than its own. §76.253(b)(1), (2). If the franchise authority requires access channels (which is compelled by the FCC in the major markets but is a local option elsewhere), it may also require that production facilities be made available. Production facilities for the other designated access channels—educational access and local government access—are on a different footing. The FCC has not required cable operators to furnish production facilities for such channels. It is therefore appropriate for a franchise authority to request applicants to indicate what facilities they agree to furnish for public access channel users and on what terms they will be made available. It is also appropriate to ask whether applicants will furnish any facilities for the educational and/or local government access channels, despite the fact that the FCC has not mandated it.

Because the latter is not prescribed by the commission's rules, it falls into the category of "extra services" as to which the FCC has decided not to require waivers unless they are clearly excessive. The commission's policy on this subject is explained at some length in the *Clarification*, as follows:

> Another area that we closely monitor in relation to the franchise fee is the rather all-encompassing problem of "extra services". This has included everything from the free wiring of entire school systems to the building of television studios attached to the local high school, extra free channels, fees for access groups, and even free television sets for city officials.... It is precisely because these "extra services" take such diverse forms that specific guidelines are almost impossible to enunciate....
>
> In many if not most franchises, the franchisee is required to install one free "tap" or "drop" in each local school and often in every other government building (city hall, firehouse, etc.). We have no objection to such a provision. In a few instances, however, the free extra service has been much greater. Some franchises have required the cable operator, for instance, to wire each room in all the local public schools. This in essence requires the operator to internally wire the school system free of charge. Such an expense can be considerable, especially when several hundred rooms might be involved. The cost of equipment and materials alone could amount to more than the revenue derived from the franchise fee.... This type of expense is just as real and has just as much of an effect on the franchisee as a simple fee. All parties must begin to recognize that when such costs are incurred they of necessity often become trade-offs on service provided elsewhere to the community at large. In this example we merely have the cable operator subsidizing the school system. This is not his function.
>
> A trend seems to be developing where franchising authorities specify in the franchise the production equipment to be made available. Some franchises have become so technical that they even include the model numbers of particular microphones and cables. While such "service package" requirements are not prohibited by our rules, we do not think it is a particularly good idea. Technology in the area of low-cost video production equipment is advancing so rapidly that such specifications are likely to be an invitation to planned obsolesence....
>
> As was noted earlier, if the franchising authority wishes to specify the service package it expects from the operator in the franchise, we will not stop it from doing so. Reasonable service offerings can and are being made in the franchising process. Both franchising authorities and franchise applicants must recognize, however, that any specification of services will reflect on the costs of the over-all service to the community. Excessive service demands or offers will affect the viability of the system. Cable operators must learn that accepting such demands simply to secure a franchise may not be in their or the cities best interest. Similarly, franchise authorities must be cautious of accepting high priced extra service offerings on the basis of bid procedures. The net effect of some superficially attractive offerings might be a basic system that does not find it possible economically to serve the community properly.

It has been our policy to date to view any service package requirements in relation to our franchise fee limitation. We plan to relax this approach experimentally. The service package—so long as it is directly related to service and equipment which can potentially benefit all cable users—will now be treated as a contractual question and, so long as the package is not clearly excessive, solely up to the discretion of the franchisor and franchisee.* We wish to emphasize, however, that we are relaxing the effect of our rules experimentally. Any evidence that cable operators or franchisors are using this relaxation to return to the damaging process of simple "bidding contests" will result in the immediate reinstitution of our former procedures.

It should be noted that we are making a distinction on what will or will not be viewed as part of the franchise fee "payment-in-kind" limitation. Required extra services that benefit only one group of special users is still considered a type of cross-subsidy that will be viewed in relation to the franchise fee. As an example, the operator being required to wire the entire local school system for closed circuit cable use would still be considered payment-in-kind. Specific equipment or personnel requirements where the benefits are available to all cable users would not..

The information we will be seeking is also information that any responsible franchising authority should demand prior to accepting any applicant's proposal, i.e., what are the expected expenses involved in the service offering; how will those expenses contribute to the quality of cable services in the community; what will be the effect of those expenses on the financial viability of the system, etc.

We will no longer attempt to "second guess" the franchising authority on the answers to those types of questions. It is hoped that all parties will realize that decisions made in the area of required services may well have a major impact on the development of cable in any particular locale. We will, however, continue to monitor such agreements. If we find that serious abuses are arising that could effect [sic] our national goals we stand ready to re-establish procedures to remedy the problem.

Once again, it should be emphasized that the flexibility we are encouraging in service packages is restricted to services, equipment or personnel available to all cable users. Proposals that would benefit only one class of cable users would not be acceptable. Studios, equipment, or mobile vans designated for use or given specifically to one group such as the educational authority or a public access group would not be reasonable. Such equipment, etc., must inure to the benefit of all users, including the cable operator, for his own origination programming, if any. As was explained in detail earlier in this document, guidelines, and procedures for waivers will remain in force regarding channel capacity, extra access channel demands, etc. *Clarification*, ¶108-18.

*In this context we are discussing "service packages" only as they relate to equipment, personnel, etc. This does not include preempted services such as extra channels, origination programming, etc.

11. RATES (SEE FORM Q)

FCC rules require the franchise authority to specify or approve "the initial rates that the franchisee charges subscribers for installation of equipment and regular subscriber services." §76.31(a)(4). The same section provides that "no increases in rates charged to subscribers shall be made except as authorized by the franchising authority after an appropriate public proceeding affording due process." Under this rule, the franchise authority may specify what rates it will permit to be charged. Alternatively, it may invite applicants to specify what rates they will charge. However it is accomplished, these rates must be subject to the franchise authority's approval. Of course, a waiver would be required if local officials wish to specify or approve rates for other than "installation of equipment and regular subscriber services," and the prospects of obtaining such a waiver from the commission are very dim. "Regular subscriber services" means "that service regularly provided to all subscribers" and includes "all broadcast signal carriages and all... required access channels including origination programming. It does not include specialized programming for which a per-program or per-channel charge is made." *Clarification*, ¶84. The commission's rationale for this position is as follows:

> After considerable study of the emerging cable industry and its prospects for introducing new and innovative communications services, we have concluded that, at this time,

there should be no regulation of rates for such services at all by any governmental level. Attempting to impose rate regulation on specialized services that have not yet developed would not only be premature but would in all likelihood have a chilling effect on the anticipated development. This is precisely what we are trying to avoid. The same logic applies to all other areas of rate regulation in cable, i.e., advertising, pay services, digital services, alarm systems, two way experiments, etc. No one has any firm idea of how any of these services will develop or how much they will cost. Hence, for now we are preempting the field and have decided not to impose restrictive regulations. Of course, at such time as clear trends develop and if we find that the free market place does not adequately protect the public interest, we will act, but not until then. *Id.* at ¶85.

Franchise authorities who invite applicants to propose a rate schedule should be advised that it is extremely unproductive to permit the selection of the franchisee to turn upon who will charge the lowest rate. If that happens, the franchisee who has bid the unrealistically low rate is likely to return to the government for a rate increase far sooner than one who has submitted a higher, but more realistic, rate.

The franchise authority is also free to devise a procedure for reviewing proposed rate increases. Such a procedure must be part of a public proceeding affording due process. As with subscriber rates, the franchise authority may specify the procedure and request applicants to consent to it, or may ask applicants to submit proposed rate review procedures for the franchise authority to approve.

12. **FRANCHISE FEE** (NO FORM)

The FCC limitation on franchise fees is a much debated subject. The commission has purported to preempt franchise authorities from exacting a franchise fee of more than three per cent of gross subscriber revenues, or five per cent if a special showing is made to demonstrate that local regulatory expenses warrant the higher percentage. Spokespersons for local governments challenge the federal government's right to impose the limitation, characterizing it as an interference with local governments' rights to regulate their streets and highways. However, the question has not yet been presented for authoritative judicial determination and the matter remains unresolved.[1]

Section 76.31 (b) of the FCC's rules provides that:

> The franchise fee shall be reasonable (e.g., in the range of 3-5 percent of the franchisee's gross subscriber revenues per year from cable television operations in the community (including all forms of consideration, such as initial lump sum payments). If the franchise fee exceeds three percent of such revenues, the cable television system shall not receive Commission certification until the reasonableness of the fee is approved by the Commission on showings, by the franchisee, that it will not interfere with the effectuation of Federal regulatory goals in the field of cable television, and, by the franchising authority, that it is appropriate in light of the planned local regulatory program.

The commission's *Report and Order* discussed the limitation as follows:

> While we have decided against adopting a two percent limitation on franchise fees [which had been the FCC's original proposal], we believe some provision is necessary to insure reasonableness in this respect. First, many local authorities appear to have exacted high franchise fees more for revenue-raising than for regulatory purposes. Most fees are about five or six percent, but some have been known to run as high as 36 percent. The ultimate effect of any revenue-raising fee is to levy an indirect and regressive tax on cable subscribers. Second, and of great importance to the Commission, high local franchise fees may burden cable television to the extent that it will be unable to carry out its part in our national communications policy. Finally, cable systems are subject to substantial obligations under our new rules and may soon be subject to congressionally-

[1] For this reason, the center recommends that franchises contain a provision to renegotiate the fee if the courts ultimately determine that the FCC has no authority to impose the three to five percent limitation, or if the commission's rules are changed with regard to the basis upon which fee is computed. "The term gross subscriber revenues, which is the basis for computing the fee, is meant to include only those revenues derived from the supplying of regular subscriber service, that is, the installation fees, disconnect and reconnect fees, and fees for regular cable benefits including the transaction of broadcast signals and access and origination channels if any. It does not include revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, or any other income derived from the system." *Clarification*, ¶95.

imposed copyright payments. We are seeking to strike a balance that permits the achievement of federal goals and at the same time allows adequate revenues to defray the costs of local regulation....

It is our judgment that maximum franchise fees should be between three and five percent of gross subscriber revenues. But we believe it more appropriate to specify this percentage range as a general standard, for specific local application. When the fee is in excess of three percent (including all forms of consideration, such as initial lump sum payments), the franchising authority is required to submit a showing that the specified fee is appropriate in light of the planned local regulatory program, and the franchisee must demonstrate that the fee will not interfere with its ability to meet the obligations imposed by our rules. (Footnote omitted) ¶¶185, 186.

Accordingly, to comply with the FCC's limitation, the fee cannot exceed three per cent if no special showing is to be made. If the franchise authority wishes to obtain more — up to five per cent — then (1) local officials must be prepared to justify the larger fee by showing that regulatory costs warrant the higher figure; and (2) the franchisee must affirm that paying the higher fee will not inhibit it from meeting the other obligations imposed by the commission's rules.

As to what constitutes an appropriate justification, the commission has said:

> Petitions to justify fees in excess of three percent should include both a full description of the special regulatory program contemplated and a full accounting of estimated costs. Such petitions should also contain information on the estimated subscriber penetration and the derived figures on revenue anticipated from the franchise fee. It is only with a complete showing of this nature that we can realistically determine if the extra fee request is justified and that it will not adversely affect the operator's ability to accomplish federal objectives.
>
> The recitation of the normal obligations to oversee a franchisee assumed by the local authority is not sufficient to warrant extra fees. Justifications that simply allocate a portion of the time and salary of various city officials to cable regulation without a full explanation of the special regulatory program to be carried out will also not be considered sufficient. Such an allocation, without amplification, would only confirm that the fee is being used to augment the general treasury as a revenue raising device.
>
> The reason we have allowed for extra fees despite our concern over the possible strain such fees impose on our nationwide program is to maintain flexibility. In those cases where a special office of telecommunications (such as in New York City) is warranted by unique circumstances or special personnel is hired to handle cable television regulation and complaints, the new costs could in part be covered by the higher franchise fee. Very few situations of this type have come to our attention. (Footnote omitted) *Clarification*, ¶¶104-06.

Specifically, the commission has allowed fees larger than three per cent in several situations. For example, the state of New Jersey was allowed to charge a fee of two per cent of the cable system's annual gross subscriber revenues, in addition to the local authority's two per cent, to support the regulatory and supervisory functions of the state cable office. *Clearview Cable Corp., Inc.*, FCC 74-1141, 49 FCC 2d 485 (1974). Connecticut imposed a public utility commission fee on cable systems of eight per cent, but the fee was simultaneously offset by an exemption from the personal property tax for cable systems, and thus the FCC permitted the action. *Coastal Cable TV Co.*, FCC 74-731, 47 FCC 2d 877 (1974). And a town in Minnesota required a $25,000 "acceptance fee," plus five per cent of the gross subscriber revenues. The FCC accepted the proposal after a detailed showing by the town that the lump-sum payment and the five per cent fee would cover only slightly more than half of the expenses that were specifically allocable to granting the franchise and regulating the system. *General Television of Minnesota, Inc.*, FCC 74-518, 47 FCC 2d 60 (1974).

Thus, prior to the application stage, the franchise authority should determine its regulatory objectives and the cost to it of implementing them. If the local government's projected costs are the monetary equivalent of more than three per cent, it should ask applicants to take the higher (five per cent) fee into account in projecting the economics of building a cable system that otherwise adheres to FCC requirements in the community. They should further indicate their agreement to submit such a showing in the FCC certification process to justify the higher fee.

In this connection, it should be noted that the permissible franchise fee, while it does include any

lump sum payments, does not include "stated consulting fees and expenses incurred in the granting or renewal of the franchise." *Clarification*, ¶107. Thus, franchising authorities should calculate such expenses prior to the application stage, and either allocate them among all applicants or make them applicable only to the successful applicants.

13. EMPLOYMENT REQUIREMENTS (SEE FORM R)

Cable television systems are subject to the FCC's equal employment opportunity rules. Those rules are quite thorough, so it is unlikely that a franchise authority could improve upon them by additions. At the application stage of the selection process, however, responsible officials may wish to request a statement from the applicants as to their hiring and promotion practices.

14. CONSUMER COMPLAINTS (SEE FORM S)

At the application stage, it is also appropriate to ascertain how the system operator would handle complaints from subscribers.

As a means of assuring that subscribers receive quality service and quick resolution of complaints, the commission requires that:

> The franchise shall: (i) specify that procedures have been adopted by the franchisee and franchisor for the investigation and resolution of all complaints regarding cable television operations; (ii) require that the franchisee maintain a local business office or agent for these purposes; (iii) designate by title, the office or official of the franchising authority that has primary responsibility for the continuing administration of the franchise and implementation of complaint procedures; and (iv) specify that notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of initial subscription to the cable system. §76.31(a)(5)

This rule is designed to require franchising authorities to adopt a program for the efficient resolution of local cable television related complaints. Such local procedures may be set out in a municipality's administrative regulations or in the franchise itself. Thus, the franchise authority should invite applicants to specify procedures they believe to be effective in investigating consumer complaints.

III. SOME ISSUES IN SELECTING A CABLE TELEVISION SYSTEM OPERATOR AND IN DEVELOPING THE FRANCHISE

This section of the report isolates some of the issues which arise in the cable television franchising process and attempts to provide assistance to the franchising authorities faced with these questions. The six topics addressed are not a comprehensive list of the possible questions. They do, however, represent the more typical problems raised in the franchising process.

Due Process and Franchisee Selection

The FCC requires that "the franchisee's legal, character, financial, technical and other qualifications. . . have been approved by the franchising authority as part of a full, public proceeding affording due process" before federal certification will be granted. 47 C.F.R. ¶76.31(a)(1).

In its accompanying report, the commission discussed those requirements saying:

> (W)e expect that franchising authorities will publicly invite applications, that all applications will be placed on public file, that notice of such filings will be given, that where appropriate a public hearing will be held to afford all interested persons an opportunity to testify on the qualifications of the applicants and that the franchising authority will issue a public report setting forth the basis for its action. *Report and Order*, ¶178.

This commentary on the rule lends some definition to the "due process" requirement. The expectation that applicants must be invited suggests that local governments planning a negotiated selection should solicit other applicants. The expectation that a report be published stating the basis for the franchising decision seemingly forces the franchising authority to proffer justification for its selection.

However, there is no guidance as to what would be sufficient justification for selection of a franchisee when a public hearing is "appropriate," nor what remedy is available if it is determined judicially that these broadly defined directives have not been met. Moreover, since the commission's "expectations" are not explicitly required in the rules, they are probably not absolute requirements

but only suggestions. Yet, because they are suggestions from the regulatory agency which may eventually determine whether the local selection process was adequate, local governments should either heed those suggestions or have persuasive justifications for omitting any of these steps.

Moreover, there are some legal principles, probably applicable to cable franchisee selection, which define the "due process" requirement. In its most elemental state, due process means basic fairness. The United States Supreme Court has said:

> [A]s a generalization, it can be said that due process embodies the differing rules of fair play, which through the years have become associated with differing types of proceedings.... The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding are all considerations which must be taken into account. *Hannah v. Larche*, 363 U.S. 420, 442 (1960).

Within the context of a cable franchising process, basic fairness would mean that all the negotiating or bidding ground rules must be known to all participants. If any of the applicants know how much weight will be given to particular items in the application form, or know which items are negotiable and which are not, or know certain responses that would eliminate an applicant, such matters should be known by all.

In addition to the fairness requirement, due process would further require that the franchise authority's actions be judicious. For example, the acceptance or rejection of bids by local governments can be judicially reversed if there is some strong proof of fraud, bad faith, favoritism or abuse of discretion.[1] Thus, responsible officials should be careful to avoid even the impression of any of these in the selection process.[2]

Waivers of the FCC Rules

The second set of questions which is frequently an issue in the franchisee selection process is that of whether or not and how local governments may exceed or alter federal cable television requirements.

Whether the local government can exceed or change federal requirements in its cable ordinance depends upon whether an FCC rule is preemptive of local government action. For example, standards that are "quantitative definitions of the electrical or optical characteristics of a signal source, transmission system, or terminating device" and speak to the "shaping, amplification, attenuation, purity, etc., of the signals carried on the system" have been preempted by the FCC.[3] As to these matters, locally adopted standards must be the subject of a waiver from the commission. However, the commission specifically declined to preempt:

> ...mechanical or equipment standards designed to protect, for example, against extraordinarily corrosive environments, daily or seasonal temperature extremes, high winds, or rodent attack. Nor are we here directly concerned with the channel capacity of a system, protection against electrical supply outages, the placement of structures, construction practices, or electrical safety code enforcement.[4]

As to such matters, local governments may adopt standards for which FCC waivers are unnecessary.

The manner of seeking waivers is provided for in the FCC's rules and was discussed in the previous section of this paper. What these rules do not cover is how a franchise authority which wishes to require its franchisee to seek waivers, operates in its legislative and selection processes to ensure that such changes are sought. The question is especially perplexing since the franchise authority is not a necessary party to the federal certification process, where waivers are generally sought.

Since the federal rules do not address this question, any statement about its resolution is somewhat speculative. Yet is is fair to say that: 1) the more explicitly the franchise authority has stated its desire to have a rule waived throughout the legislative process, and the more persuasive the reasons for the waiver, the greater the probabilities that such an intention will be honored; and 2) the FCC has announced its inclination to respect agreements made between franchisees and franchise authorities during the franchisee selection process.

The commission recognized the local nature of cable in its rules and accompanying reports and is interested in seeing the vast potential of cable

---

[1] See *Antieau on Municipal Corporations*, §10.43 (1965).

[2] The FCC has suggested a procedure which it believes meets all due process requirements. See *Clarification*, ¶54.

[3] The Cable Television Information Center has developed a set of technical standards for construction and performance designed for inclusion in local ordinances. In many instances, the center's standards exceed FCC criteria, but do not go beyond state-of-the-art equipment capability. See p. 18, footnote 2.

[4] *Report and Order*, FCC 74-1168, 49 FCC 2d 470 (Docket No. 20018) (1974).

realized. Yet it is interested in seeing this potential realized in a responsible fashion. Additionally, as indicated in an opinion granting a certificate of compliance, the FCC is "reluctant to substitute [its] judgment for that of all of the interested parties." *Theta Cable of California*, 42 FCC 2nd 387, 389 (1973). This comment by the commission referred to the franchisee's agreement with a group of contiguous municipalities to provide additional free educational access channels.

This information then suggests a three-stage process franchising authorities should follow in imposing any requirements, which are additional to or vary from the FCC's standards. (1) The study process which recommends legislation should clearly state that waivers of the rules must be sought where they are required. (2) An application form should be developed which clearly acknowledges that an applicant's agreement to provide a requested aspect will require that it seek a waiver. (3) There should be close monitoring and, if necessary, active participation by the franchise authority in the federal certification process.

The Manner of Presenting Information to the Franchise Authority

Proposals for the operation of cable television systems typically have followed a general pattern. Lengthy, bulky documents replete with technical data and descriptions, equipment specifications and biographical material on the applicant company's board of directors and officers, have been the standard franchise proposals. While there is no question that valuable information has been contained in these tomes, it has been delivered in a form that is neither manageable, useful, nor, in many cases, relevant to the decision making process. Rather than clearly elucidating the proposed cable system or operating plan, such proposals normally obfuscated the crucial policy issues involved behind a mantle of a highly technical data. Moreover, when there were two or more applicants, it was frequently impossible to compare the specific proposals of the competing cable companies and thus distinguish between or among the bidders. The capacity to draw such distinctions logically and factually is a critical element of selecting a cable operator.

To remedy these difficulties, local officials should require all prospective franchisees to file identical application forms in a precisely designated format. With rare exception, the form should contain all the written information which the franchise authority will receive from applicants and upon which it will base its franchising decisions. As a result, it should clearly delineate all of the areas where information is desired and required; indicate the franchise authority's wishes or requirements with regard to each area; and show in what areas, if any, the government has a particular interest. If the franchise authority is requiring service which would necessitate an FCC waiver, that authority should clearly ask in the application form whether the applicant will seek such a waiver. While applicants should be permitted to both comment and elaborate upon these written responses in the public hearings or oral presentations which the franchise authority schedules, responsible officials should demand precise written information from prospective franchisees. The task of sorting through a number of applications will be made significantly less burdensome if the information is received in a fashion suitable for comparison.

Designation of Demands as Negotiable or Nonnegotiable

Depending upon how extensive the franchise authority's study process is, and its ability to determine what items it is especially interested in including in its franchise, local officials may characterize the community's cable goals as either negotiable or nonnegotiable. For example, if a community is particularly interested in having cable service provided without delay in all parts of the franchise area, that franchise authority may declare in its cable ordinance and application form that it is requiring extension of trunk cable to all parts of the community within a certain time. It could further state this requirement would apply to any applicant that would become the franchisee, i.e., that the requirement is nonnegotiable. Any applicant for the franchise that indicates in its application form either an unwillingness or an inability to meet that requirement would be eliminated from further consideration.

On the other hand, assume that after an abbreviated study process, a franchise authority decides that it is generally interested in making available to the public a carefully selected "package" of program production equipment. The local government has not determined precisely how much and what variety of equipment it desires. In its ordinance, the local government states its interest in having production equipment made widely available and

in its application form declares this same desire; asks prospective franchisees for their plans with regard to equipment; and declares that this is an area where it is willing to negotiate. The government receives four completed applications, each with a different proposal for production equipment, and awards the franchise to the company which it felt offered the equipment package most suitable to the community.

These examples of nonnegotiable and negotiable aspects of an application form indicate some important uses of the distinction. The designation can be an important means of narrowing down the number of viable applicants for a community's franchise. It can also be used to assist a franchise authority in securing enforceable promises of various service.

An attendant responsibility of this method of receiving information is the need for careful judgment in making these distinctions. For example, in the example above dealing with the extent of system construction, an applicant for the franchise could be eliminated from further consideration because of its refusal to agree to the timetable established. It would be unfair then, and perhaps even violative of due process, to subsequently relax demands and to meet a less demanding construction schedule than that originally required. Hence, the need for careful consideration of those items which are to be negotiated and those which are to be firmly established is demonstrated.

Weighting Schemes for Bids

In addition to the negotiable/nonnegotiable categorization discussed above, some local governments assign priorities among the negotiable items in their application forms.

For example, assume that a franchise authority determined that each bidder which has satisfied the legal, character, financial and technical tests and had agreed to the nonnegotiable requirements would be ranked on a 100 point basis on the application form's negotiable items. The negotiable aspects might be as follows:

—extension of service to all parts of the franchise areas
—local origination budget
—access equipment facilities
—free hookup to elementary and secondary schools
—financial capability.

Of course, the franchise authority would assign values to these items, depending upon their importance to the community. The bidder having what the local government feels to be the "best" proposal in each of these areas would receive the greatest number of points for the item, the bidder with the "second best" proposal would be awarded the second highest number of points in that category and so on until each bid has been ranked on each negotiable item.

The use of a weighting scheme allows the franchise authority to design a quantitative value to those parts of the proposed franchise it deems to be of importance and likewise provides itself with a reasonably precise method of categorizing and evaluating bids. Additionally, assuming the authority will issue a report on how the eventual franchisee decision was made, the use of such a plan provides a ready-made format for the justification report.

Evaluation of Applications

The development and distribution of the application form and the evaluation of the information received on the forms are key franchising actions. These are generally performed at the conclusion of the cable study and after the preparation of the cable ordinance. These activities require supervision by persons with both expertise in cable communications and familiarity with the franchise authority's goals for it. Of course, when this information is interpreted, classified and evaluated, the council (or whatever body has ultimate authority to award the franchise), will make the final selection based upon the report of the evaluators.

In some communities, the necessary talent is available locally. City or county staff are of course the most likely candidates to do this work for the franchise authority. Alternatively, in those localities which have carried out some sort of cable study, the persons responsible for such study (and quite possibly responsible for the application form itself) are usually sufficiently familiar with cable television to be able to evaluate much of the information received on the application forms. Other local governments may find it necessary to engage a consultant or advisory group for evaluating the applications or, perhaps, the more technical portions of the applications. When consultants are employed, the franchise authority should be most careful to delineate as precisely as possible the scope of the consultant's task, and not to accept their conclusions or recommendations unless the reasons for them are satisfactorily explained. Moreover, the franchise authority will want to ensure that the advisory group stay in close contact with the local government and as attuned as possible to the community's cable television goals.

IV. APPLICATION FORMS[1]

[1]See note on local options (p. 56) before sending to applicant.

(Covering Form)

APPLICATION FOR CABLE TELEVISION SYSTEM FRANCHISE FOR

_____ (Community)

PURSUANT TO ORDINANCE NO. _____

_____

Due at the office of _____ (Responsible official) at _____ A.M. P.M.

on _____ (Date)

Date of this application _____

Name of applicant _____

Address of applicant _____ (Street address)

_____ (City, state, zipcode)

Name and telephone number of principal to whom inquiries should be made: _____ (Name)

_____ (Area code – telephone number)

_____ (Authorized signature – title)

(Affidavit)

APPLICATION FOR CABLE TELEVISION FRANCHISE
APPLICANT'S AFFIDAVIT

This application is submitted in response to Ordinance No. _____ of the City/County of _____ by the undersigned who has been duly authorized to make the representations within on behalf of the applicant.

Applicant recognizes that all representations are binding on it and that failure to adhere to any such representation may, at the City's/County's option, result in revocation of any franchise that may be granted, in consequence of this application.

Consent is hereby given to the City/County to make inquiry into the legal, character, technical, financial and other qualifications by contacting any persons or organizations named herein as references, or by any other appropriate means.

Firm name _____

Affiant's signature _____

Official position _____

Date: _____ Attest: _____

_____

(Signature)

_____

(Corporate secretary or authorized official)

LEGAL QUALIFICATIONS

Does the applicant, or any principal[1] in applicant directly or indirectly own, operate, control, or have more than one per cent interest in any of the following:

		YES	NO
(1)	A national broadcast television network (such as ABC, CBS, or NBC); or	☐	☐
(2)	A television broadcast station whose predicted Grade B contour, computed in accordance with Sec. 76.684 of the FCC's rules, overlaps in whole or in part the service area of such system, or an applicant for a license to operate such a station; or	☐	☐
(3)	A television translator station licensed to the community of such system; or	☐	☐
(4)	A telephone company in its own service area.	☐	☐

If "yes" to any of the above, indicate percentage of ownership:

1. _____%
2. _____%
3. _____%
4. _____%

Is the applicant a U.S. citizen?

Is the applicant a U.S. corporation?

[1] For purposes of this form, "principal" means any person, firm, corporation, partnership, joint venture, or other entity, who or which owns or controls one per cent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

Form B

CHARACTER QUALIFICATIONS

Has the applicant (including parent corporation if applicable) or any principal[1] ever been convicted in a criminal proceeding (felonies or misdemeanors) in which any of the following offenses were charged?

	YES	NO
Fraud		
Embezzlement		
Tax evasion		
Bribery		
Extortion		
Jury tampering		
Obstruction of justice (or other misconduct affecting public or judicial officers' performance of their official duties)		
False/misleading advertising		
Perjury		
Anti-trust violations (state and federal)		
Violations of FCC regulations		
Conspiracy to commit any of the foregoing offenses.		

If "yes," attach separate statement providing specifics such as date, court, sentence or fine, etc.

Has the applicant or any principal ever been a party to a civil proceeding in which it was held liable for any of the following or is now a party to a proceeding:

	YES	NO
Unfair or anticompetitive business practices		
Anti-trust violations (state and federal) including instances in which consent decrees were entered into		
Violations of securities laws (state and federal)		
False/misleading advertising		
Violations of FCC regulations.		

If "yes," attach statement providing specifics.

Has applicant or any principal ever had a business license (defined to include FCC licenses, alcoholic beverage and restaurant license, etc.) revoked, suspended or the renewal thereof denied or is a party to a proceeding that may result in same?

YES ☐
NO ☐

If "yes," attach statement providing specifics.

---

[1] For purposes of this form, "principal" means any person, firm, corporation, partnership, joint venture, or other entity, who or which owns or controls _____% or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

CABLE SYSTEMS OWNED BY APPLICANT

List all franchises awarded in the last five years in which applicant or any principal[1] (or parent corporation or another subsidiary of the parent) owns three per cent or more of the equity interest.

1. Name of system	2. Address	3. Number of sub-scribers	4. Date of fran-chise award	5. Date local fran-chise re-quired to commence	6. Date construc-tion commenced	7a. Time inter-val between beginning of construction and start of service (dates)	7b. Where ser-vice offered by sections, inter-val between *initial* construc-tion date and start of service for each section (dates)	8. Per cent com-pleted	9. Certificate of compli-ance granted (date)	10. Name and address of local gov. officials responsible for cable franchise

[1] For purposes of this form, "principal" means any person, firm, corporation, partnership, joint venture, or other entity, who or which owns or controls _____ % or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

Form C2

EXPERIENCE – CABLE SYSTEMS OWNED BY APPLICANT[1]

List at least one, but no more than four of the applicant's systems which the applicant would make available for inspection as evidence of the applicant's qualification and experience in cable television operation. Ideally, one system should still be under construction to demonstrate applicant's construction techniques; a second system should demonstrate applicant's experience in community service; a third should be an older system to demonstrate applicant's skill in maintaining high technical quality; include any other system factors to demonstrate qualifications.

	System under construction	System w/ comm. sv.	Older system	Other system
Name of local company:				
Community:				
Address:				
Date of award of franchise:				
Date construction commenced:				
If turnkey, name of construction company:				
Percentage of construction completed:				
Certificate of compliance granted (date):				
Number of subscribers:				
A. At present				
B. Within 5 yrs. (projected)				
Homes passed by cable:				
A. At present				
B. Within 5 yrs. (projected)				
Strand or route miles of plant presently in place:				
A. Aerial				
B. Underground				
Origination programming per typical week (hours):				
A. Automated				
B. Nonautomated				
Channel programming (number of channels):				
A. Class I				
B. Class II				
Residential rates:				
A. Installation				
B. Monthly				

[1]Include copy of most recent proof of performance test for each system required to be conducted by FCC rules (§76.601).

Form D

EXPERIENCE – FORMER FRANCHISES

Applicant or any principal[1] shall list every community where it received a cable television franchise and *subsequently disposed of all or a majority of its interest.*

Name of system	Community	Date of franchise award	Date of franchise disposition	Reason for and manner of disposition

[1] For purposes of this form, "principal" means any person, firm, corporation, partnership, joint venture, or other entity, who or which owns or controls_____% or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of an applicant.

Form E

OWNERSHIP INFORMATION

To be completed by all principals and beneficial holders of 10 per cent or more of the stock or other ownership interest in applicant. Applicants include individuals, corporations, partnerships, joint ventures and unincorporated associations.

Name (if individual)_____ (if organization) _____

Address _____
(Number) (Street) (City) (State) (Zipcode)

Nature of interest: Partner ☐ Stockholder ☐ Officer ☐

Profession or occupation _____

Name/address of employer _____

_____

Number of shares _____ of each class of stock or ownership interest (including stock options and partnership options)

Percentage of ownership _____% of partnership, voting stock or equity interest

Form F

OWNERSHIP INFORMATION

To be completed by all entities who filled out Form E that are organizations or corporations (not individuals).

List all holders of 10% or more of *your own stock* or ownership interest.

Name of organization _____

Address _____
(Number) (Street) (City) (State) (Zipcode)

Holders of 10% or more of your stock:

Name	Address	
		( )%
		( )%
		( )%
		( )%
		( )%

If any of the above names are names of organizations or corporations, complete a new Form F for each until all ownership interests (individuals) are identified.

STOCK INFORMATION

Please answer the following questions concerning the corporation:

1. Is the applicant a *publicly held* corporation as defined by the rules and regulations of the Securities and Exchange Commission?

Yes ☐ No ☐

2. Stock of corporation

Class of stock	Par value	Vote per share	Number shares authorized	Number shares issued	Number shares subscribed	Total number stockholders

3. Does applicant have any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency?

Yes ☐ No ☐

If yes, submit a statement of (a) the nature of such securities, (b) the face or par value, (c) the number of units authorized, (d) the number of units issued and outstanding, (e) the number of units, if any, proposed to be issued, (f) the conditions of contingency upon which securities may be voted.

4. Is applicant corporation directly or indirectly controlled by another corporation or legal entity?

Yes ☐ No ☐

If "yes," explain.

SYSTEM GROWTH AND REVENUE STATEMENT

	Year									
	1	2	3	4	5	6	7	8	9	10
1. Households in franchise areas										
2. Basic subscribers										
Beginning										
Ending										
Average										
Increase										
3. Second set subscribers										
4. Pay TV subscribers										
Average										
5. Penetration (percentage)										
Basic subscribers/homes passed by cable										
Pay-TV subscribers/homes passed by cable										
6. Revenue per subscriber										
Basic (yearly)										
Second set (yearly)										
Pay (yearly)										
Installation										
Other										
7. Revenue – annual total										
Basic										
Second set										
Pay										
Installation										
Other										

Revenue Documentation

1. Explain "Households in franchise area" number including growth figure (if applicable).

2. Explain how subscriber and penetration figures (growth or average annual) are obtained.

INCOME STATEMENT

	Year									
	1	2	3	4	5	6	7	8	9	10
Revenue										
less operating expenses										
= Operating income										
less interest										
less depreciation										
= Pretax income										
less income taxes										
= Net income										
plus depreciation										
= Cash flow										

Form H3

SOURCES AND USES OF FUNDS

	Year										
	1	2	3	4	5	6	7	8	9	10	10 Yr. Total
Sources of funds											
Beginning cash balance											
Equity funds											
Loans											
Revenue											
Total											
Use of funds											
Capital expenditures											
Operating expenses											
Interest payments											
Income taxes											
Loan repayment											
Dividends											
Total											
Cash balance											
Total loans											
Total loans repaid											
Interest rates											
Debt/equity ratio											

CAPITAL EXPENDITURES

	Year										
	1	2	3	4	5	6	7	8	9	10	10-Yr. Total
Antenna(s) and towers(s)											
Microwave											
Headend											
Distribution											
Aerial											
Underground											
Pole arrangement											
Drops and converters: equipment on customer's premises (including capitalized labor)											
Buildings											
Leasehold improvements, furniture, fixtures											
Program origination											
Land											
Test equipment, tools, spare parts and inventory											
Vehicles											
Preoperating											
Pay TV converters											
Other											
Total											

Form H4
cont'd

Capital Expenditure Justification Sheet

(1) Distribution

Miles of cable

(a) Miles of aerial trunk—active =

(b) Miles of aerial trunk—shadow =

(c) Miles of aerial feeder—active =

(d) Miles of aerial feeder—shadow =

(e) Miles of underground trunk—active =

(f) Miles of underground trunk—shadow =

(g) Miles of underground feeder—active =

(h) Miles of underground feeder—shadow =

Underground construction

Miles of conduit required =

(2) Turnkey construction

Will construction be undertaken by contractor? _____Yes _____No

If "Yes,"

(a) Has turnkey contractor been selected?

and

(b) Who is turnkey contractor?

PAYROLL

Annual Payroll

	Year		
	1	2	3
A. Plant			
Manager			
Assistant manager			
Chief engineer			
Chief technician			
Service technicians			
Installers			
Maintenance technicians			
Bench technician			
Microwave technician			
Others			
B. Origination			
Assistant manager			
Control staff			
Studio staff			
Mobile studio staff			
Others			
C. Office			
Assistant manager			
Executive secretary			
Area managers			
Office managers			
Secretaries			
Bookkeepers			
Dispatchers			

EXPENSES
Three-Year Detailed Projections[1]

A. Plant

	Year		
	1	2	3
Salaries			
Employee benefits			
Maintenance			
Converter maintenance			
Pole and site rentals			
Microwave service			
Power			
Vehicle expense			
Rent			
(Payroll and expenses capitalized)			
Other (small tools, uniforms, etc.)			
Total			

B. Origination

	1	2	3
Salaries			
Benefits			
Rent			
Maintenance			
Film expense			
News service			
Program and material supplies			
Program and material supplies – pay TV			
Studio			
Mobile van expenses			
Others (spell out in detail)			
Total			

C. General, selling and administration expenses

	1	2	3
Salaries			
Benefits			
Light, heat and power			
Vehicle expense			
Rent			
Travel and entertainment			
Contributions			
Professional services			
Stationary and supplies			
Postage and freight			
Advertising and promotion			
Telephone and telegraph			
Sundry office expenses			
Insurance			
Bad debt account			
Start-up expenses			
State and local taxes			
Franchise fees			
License and permit fees (local)			
FCC fees			
Services purchased from parent company			
(Payroll and expenses capitalized)			
Others (spell out in detail)			
Total			

[1] Ten year totals to be reflected in Summary at end of Form H6.

Expense Justification

1. For all "Other" categories that exceed 10% of a particular total operating cost, specify the individual components that make up the "Other" category and document these expenses.

2. If services are being obtained from the parent company, fill in Form H8 in *complete* detail. This detail should correspond with the total shown in the "Expense" Form H6, under "Services purchased from parent company."

Summary of Expenses

	Year									
	1	2	3	4	5	6	7	8	9	10
A. Plant										
Salaries and benefits										
Other										
Total										
B. Origination										
Salaries and benefits										
Other										
Total										
C. General, selling and administrative expenses										
Salaries and benefits										
Other										
Total										
Totals										

Form H7

DEPRECIATION

	Year										
	1	2	3	4	5	6	7	8	9	10	15 Yr. Total
Antenna(s) and tower(s)											
Microwave											
Headend											
Distribution											
Aerial											
Underground											
Pole arrangement											
Drops and converters											
Buildings											
Leasehold improvements											
Origination equipment											
Test equipment, tools and spare parts											
Vehicles											
Preoperating											
Capitalized payroll											
Other (detail) i.e., pay TV converters											
Total											

Form H7
cont'd

Depreciation Justification Sheet

Element	Depreciation life
Antenna(s) and tower(s)	
Microwave	
Headend	
Distribution	
Aerial	
Underground	
Pole arrangement	
Drops and converters	
Buildings	
Leasehold improvements	
Origination equipment	
Test equipment, tools and spare parts	
Vehicles	
Preoperating	
Capitalized payroll	
Other (detail) i.e., pay TV converters	

Form H8

SERVICES PURCHASED FROM PARENT ORGANIZATION (if applicable)

Year	1	2	3	4'	5	6	7	8	9	10
Programming										
Legal										
Accounting										
Total										

51

52

[1] For years 4 through 10, supply totals only.

Form I-1

OTHER BUILDING COMMITMENTS

To be completed by all applicants franchised in more than one community.

Miles of committed plant		Committed total capital costs				
NEW PLANT[1]		Year 1	Year 2	Year 3	Year 4	Year 5
This community	Miles					
	Cost					
Community 1	Miles					
(name)	Cost					
Community 2	Miles					
( )	Cost					
Community 3	Miles					
( )	Cost					
Community 4	Miles					
( )	Cost					
Community 5	Miles					
( )	Cost					
Community 6	Miles					
( )	Cost					
Community 7	Miles					
( )	Cost					
Community 8	Miles					
( )	Cost					
Community 9	Miles					
( )	Cost					
Community 10	Miles					
( )	Cost					

[1]New plant includes the miles of committed plant and construction costs for all recently awarded franchises which may not have started construction and also older franchises where building program is not yet complete. (Complete with names of all communities.)

Form I-2

OTHER BUILDING COMMITMENTS

To be completed by all applicants franchised in more than one community.

Miles of committed rebuilding		Committed total capital costs				
REBUILDING PLANT		Year 1	Year 2	Year 3	Year 4	Year 5
This community	Miles					
	Cost					
Community 1	Miles					
(name)	Cost					
Community 2	Miles					
( )	Cost					
Community 3	Miles					
( )	Cost					
Community 4	Miles					
( )	Cost					
Community 5	Miles					
( )	Cost					
Community 6	Miles					
( )	Cost					
Community 7	Miles					
( )	Cost					
Community 8	Miles					
( )	Cost					
Community 9	Miles					
( )	Cost					
Community 10	Miles					
( )	Cost					

	Year 1	Year 2	Year 3	Year 4	Year 5
New plant (I-1)					
Rebuilding plant (I-2)					
Total committed capital costs					

Form J

DEBT-TO-EQUITY RATIO AND PROJECTED SOURCES OF CAPITAL

(National capital requirements of multiple system operator – from Form I-2 summary)

	Year 1	Year 2	Year 3	Year 4	Year 5
Debt					
Equity					
Ratio $\frac{\text{debt}}{\text{equity}}$					

Form K

TIMES-INTEREST-EARNED RATIO

Previous five years	– 5	– 4	– 3	– 2	– 1
Gross earnings (before interest & taxes)					
Interest charges					
Times-interest-earned ratio					
Projected five years	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Gross earnings					
Interest charges					
Times-interest-earned ratio					

LOCAL OPTIONS

By using any or all of the following forms the franchise authority may organize in one place all[1] of those matters which relate to particular local requirements. Each subject area where local options may be exercised is identified by a boxed enclosure. This is followed by room on the form whereby the franchising authority can describe each local requirement before sending to applicant for completion. The balance of each form suggests ways to ask applicants to indicate how they would respond to or comply with such local requirements.

---

[1]However, no specific form is provided for the franchise fee. It is suggested that the fee itself be established by the franchise authority and made known to all applicants. (For a discussion of permissible fees and FCC limitations on them, see text at page 25). This is an item that does not fairly lend itself to the bidding process and should be uniformly treated by all applicants in their financial projections. The franchise authority should also make known to all applicants other fees that are to be imposed by the franchise, such as assessments for administering local testing procedures and consulting fees for rate reviews.

Local Option

Form L

DEFINITION OF FRANCHISE TERRITORY AND EXTENSION OF SERVICE POLICY

The franchise authority may either (1) designate areas to be franchised and stipulate conditions which are to be followed by applicant in wiring each area and/or (2) it may require the following information from the applicant:

Conditions required by franchise authority:

Each applicant shall submit the following information on a large-scale map of franchise area:

a. Areas where every home will have access to service during *each* of the years 1 through 5.

b. Areas in which applicant will *not* provide service unless, e.g., densities increase, or special arrangements are made to compensate applicant for cost of extending service.

If any areas are designated in (b) above, applicant shall state the terms under which service will be extended.

CONSTRUCTION REQUIREMENTS

The franchise authority may choose to see that local policies affecting the installation of aerial and underground wiring are reflected in construction specifications. The impact of such policy decisions should be tested as to the resulting economic viability of the system.

The franchise authority may also require construction at a faster pace than 20% per year (the FCC's minimum suggestion).

Undergrounding requirements of franchise authority:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Applicant's acknowledgement and agreement to adhere to above stated undergrounding policy, certifying that said policy is reflected in construction and financing proposals.

_____

_____

_____

_____

_____

Rate of annual construction required by franchise authority (if required):

1st year _____ %

2nd year _____ %

3rd year _____ %

4th year _____ %

5th year _____ %

Construction schedule by type of plant (proposed by applicant)

	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5	Total
Aerial plant miles						
Underground with conduit						
Underground without conduit						
Total miles of plant (yr. end)						
Cumulative percentage completed (yr. end)						

Local Option

Form N

CHANNEL CAPACITY AND SYSTEM DESIGN

If franchise authority desires channel capacity in excess of the FCC's maximum requirements (major market — must have 20 channels or twice the number of broadcast signals, whichever is the greater), a demonstration of need for capacity and the system's ability to provide it must be presented to the commission (most new systems will have design capacity in excess of FCC requirements).

Franchise authority channel requirements:

_____

_____

_____

_____

Applicant's assent to providing desired capacity and supporting data demonstrating ability to meet franchise authority's requirement:

_____

_____

_____

_____

_____

_____

Proposed system design:

	Franchise authority's requirement (if any) (Mark if applicable)	*Applicant's proposal*
_____	Single trunk cable[1], single feeder cable (cable "A")[2]	_____
_____	Dual trunk cable, single feeder cable (Cables "A" and "B")	_____
_____	Dual trunk cable, dual feeder cable	_____
_____	Will one of the dual trunk lines be a "shadow" cable (yes, no)	_____
_____	Number of hubs	_____
_____	Number of active trunk cables per hub	_____
_____	Set converters to be used initially?	_____
_____	Within____ years?	_____

Other system (describe) _____

[1]"Trunk" includes all cable and equipment used to transport signals to or from a headend or hub. It may consist of single or multiple cables.

[2]"Cable A" is used to indicate cable service to all subscribers, home and institutional. "Cable B" is used to indicate cable service provided for institutional uses (not to home subscribers).

Channel capacity to subscribers[1]

DOWNSTREAM

Downstream
Cable "A"

Frequency spectrum: _____–MHz

Number of initial operating channels: _____

FM radio: (yes, no) _____

Number of future channels: _____

Indicate any qualifications as to *when*, under *what* circumstances and *how* future capacity will be provided. _____

UPSTREAM

Upstream
Cable "A"

Frequency spectrum: _____–MHz

Number of initial operating channels: _____

Number of future channels: _____

Indicate any qualifications as to *when*, under *what* circumstances and *how* future capacity will be provided. _____

[1]This portion is for use in computing a single trunk cable, single feeder cable system, or for computing cable "A" of a dual trunk cable, single feeder cable system.

Local Option

Form N, cont'd

Institutional network capacity[1] (Cable "B") (If required or offered)

		Downstream	Upstream
Maximum capacity computation			
Number channels on any one trunk	(initial)	A	B
	(future; include initial)	C	D
Multiplied by number of trunks			
	(initial number of trunks)	E	
	(future number of trunks; include initial)	F	
Maximum initial capacity (Cable B)			
A x E downstream			
B x E upstream			
Maximum future capacity			
C x F downstream			
D x F upstream			

		Downstream	Upstream
Interconnection design between hubs			
Number of interconnection cables	initial active		
	future		
Frequency spectrum (initial)		–MHz	–MHz
Operating channels (initial)			
Future additional spectrum		–MHz	–MHz

Other design (describe)

_____

_____

[1]This portion is for use in calculating downstream and upstream channel capacity when a second cable of a trunk is dedicated to institutional use only (not to home subscribers).

Local Option

Form N,
cont'd

Proposed system design

Each applicant shall submit map indicating locations of proposed headend, hubs, antennas and microwave facilities.

List headend electronic equipment and equipment to be used for antennas and antenna towers.

Describe proposed FM signal carriage capabilities.

Describe headend electronic equipment to be installed for interactive capabilities (if proposed), including computer hardware and software.

Describe plans to operate or contract for a microwave relay service for the following bands:

Common carrier

Instructional Television Fixed Service (ITFS)

Cable Television Relay Service (CARS)

Telephone transmission

Other

Local Option **Form N, cont'd**

Describe proposals for interconnection with other cable systems or institutions, and how interconnection is to be accomplished technically. Discuss plans to ensure compatability with other systems.

Describe any proposals for carriage of television signals via satellite.

Describe and list design specifications for any of the following subscriber terminal equipment proposed to be used by applicant.

a. Matching transformers

b. Dual cable switch

c. Switch converters

d. Channel descrambler

e. Interactive terminal

The FCC has totally preempted all authority concerning "quantitative definitions of the electrical or optical characteristics of a signal source, transmission system, or terminating device." As for other standards, the franchise authority may establish its own technical standards, adopt the FCC standards, adopt Cable Television Information Center technical and performance standards or have each applicant compete over presenting the "best" technical standards. If the latter option is chosen, outside consultant advice may be necessary. However, if the center's technical and performance standards are used, the instructions therein can be helpful in making "in-house" evaluation of proposals.

Certain of the center's standards (subsections B and C) have been preempted by the FCC, as mentioned above. However, these standards are superior to those established by the FCC and are subject to waiver if there is a demonstrated state or local need. If the franchising authority chooses to require adherence to these standards, the franchisee should be required to request the necessary waiver.

Franchise authority requirements:

Local Option

Form N, cont'd

Applicant shall provide detailed specifications, performance standards and construction specifications:

Applicant shall describe performance standards testing program, including procedures for testing, test equipment to be used and number and location of test points for each of following tests:

Initial proof of performance
Annual performance test
Other recurring tests (if planned)
Tests in response to subscriber complaints

System maintenance procedures

Describe procedures for routine preventive maintenance, including type and frequency of system inspection and testing, number and qualifications of technical staff and service facilities.

Narrative

Each applicant must describe in narrative form its concept of the cable system it proposes to operate in the community. Applicants should discuss anticipated development over the period for which the franchise will be granted. Applicants must also discuss:

Channel capacity, with regard both to the short-term and longer term, including specific reference to the degree of flexibility for adapting the proposed system to increasing or changing capacity requirements.

The extent to which bi-directional capability will be available initially, and what steps are proposed to provide additional capability as the state of the art and public need develop.

Origination capability proposed for the system, including fixed and mobile studio facilities, remote origination capability and automated programming services.

Detailed descriptions and technical data should not be repeated from other forms.

This narrative report should describe all miscellaneous types of services and programs to be offered that are not otherwise included on the forms provided (e.g., remote control devices for all subscribers, description of marketing program and promotional efforts, donated services to community groups, emergency override permitting interruption of all channels for emergency messages from local public officials, interconnection of schools and/or local governmental offices with both open and closed circuits, rate differential for senior citizens, etc.).

Local Option **Form O**

SIGNAL CARRIAGE AND CHANNEL USES

The franchise authority may require specific uses of channels in excess of FCC requirements if appropriate waivers are sought and applicant approvals are obtained. An alternative course of action is to have applicants compete over the delivery of diverse quality programming, and for the franchise authority to obtain legally binding commitments to carry them out.

Specific channel uses required by franchise authority (if any):

_____

_____

_____

_____

_____

_____

Applicant's agreement to support request for FCC waivers:

_____

_____

_____

_____

Total broadcast signal carriage and other proposed channel uses – No. of channels _____

LOCAL BROADCAST SIGNALS

Local Affiliation	Call letters – city			
_____	_____	Broadcast channel # _____	Cable channel # _____	Hrs. per day _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

IMPORTED DISTANT BROADCAST SIGNALS

Include proposed substitutes (if any) for "blackout" situations

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Local Option

Form O, cont'd

NONAUTOMATED PROGRAMMING

	Cable channel number	Hours per day
Local origination		
Local government access		
Public access		
Educational access		

AUTOMATED PROGRAMMING

Time/weather		
Stock market		
News service		
Entertainment guides		
Movies		
Public service announcements		

Leased access pay-TV		
Available for expansion		
FM-Radio – number stations		
AM-Radio – number stations		

Local origination commitment

Operating budget

2nd year _____

5th year _____

10th year _____

Capital budget (local orig. only)

10 year total _____

Staff commitment

2nd year	_____	Full time	_____	Part time
5th year	_____		_____	
10th year	_____		_____	

Percentage of weekly total of nonautomated programming

	2nd year	5th year
Local live	_____ %	_____ %
Local videotape	_____ %	_____ %
Local film	_____ %	_____ %
Syndicated videotape	_____ %	_____ %
Syndicated film	_____ %	_____ %

ACCESS CHANNELS, FACILITIES AND ADMINISTRATION

Some production facilities must be made available for the public access channel [FCC 76.251 (a) (4)]. The franchise authority should determine how and on what terms applicants will make specific facilities available. The authority may require additional production facilities to be provided for other access channels.

Facilities and/or operating rules for the public access channel required by franchise authority (if any):

Applicant's acceptance of requirements and assurance of compliance:

Applicant is to supply a complete set of rules and procedures for the operation of *all* access channels. The rules must describe availability of equipment, availability of channels for usage (scheduling procedures), rates to be charged, copies of contract forms, application forms, etc.

Information is attached? Yes _____ No _____

Comment: _____

Leased access plan

Number channels available for full-time lease _____

Number channels available for part-time lease _____

Plan should describe expected revenues from leased operation, for pay (premium) television, movies, sports, etc., whether applicant will supply programming or will only lease channel.

Plan is attached? Yes _____ No _____

Production equipment and facilities

Required by franchise authority (check)	Equipment list (Describe types of equipment, i.e. brand names, quantities, color/bw)	Provided by applicant (check)	Available for public access (check)	Available for other access channel usage (check)
	Central studio			
	Smaller studio(s)			
	Mobile unit(s)			

Local Option

Form Q

PROPOSED RATES

The franchise authority may specify the initial rates to be charged by the franchisee for installation of equipment and regular subscriber services, or such rates may be a negotiable item, with each applicant offering a proposed rate structure. To specify or require approval of "Other" rates, i.e., leased channels, equipment usage and pay TV, a waiver of FCC rules will be required.

	Required by franchise authority (if applicable)		Offered by applicant	
	Installation	Monthly	Installation	Monthly
Basic subscriber rates (Mark out inapplicable option: w or w/out)				
1st outlet w or w/out converter				
Additional outlet w or w/out converter				
FM with original installation				
FM separate installation				
Relocation of TV receiver				
Reconnection services				
Hotels, motels, hospitals				
1st outlet w or w/out converter				
Each add'l outlet with converter				
without converter				
Commercial rates				
1st outlet w or w/out converter				
Add'l outlet w or w/out converter				

Local Option

Form Q, cont'd

	Required by franchise authority		Offered by applicant	
	Installation	Monthly	Installation	Monthly
Multiple units-bulk rate (if applicable) Apartments, mobile home parks, nursing homes, public housing, etc.				
One billing to owner				
Up to 5 units				
6 to 49 units				
50 to 99 units				
100 and over				
(w or w/out converters)				
(w or w/out FM)				
Reconnection services				
up to 5 units (each unit)				
6 to 49 units (each unit)				
50 to 99 units (each unit)				
100 and over (each unit)				

Other rates

If deposit is required for converter, state amount and describe conditions relating to ownership, use and replacement.

Detail proposed rates that will be charged for pay TV, including any charges for equipment installation.

Local Option

Form Q, cont'd

Detail studio and equipment usage rates.

Noncommercial users (public access, governmental, non-profit groups, etc.)

Commercial users

Describe rates for governmental and educational facilities.

Installation fees

One cable outlet (per facility):

More than one outlet (per facility):

Monthly charges

Describe advertising rates.

Describe leased channel rates.

Noncommercial

Commercial

State any other rates anticipated but not mentioned above.

EMPLOYMENT PRACTICES

Franchise authorities may want to examine the applicant's employment practices. While FCC requires all cable systems to meet their equal employment opportunity rules, the authority may wish to see evidence of applicant's compliance with these rules along with general information as to corporate employment procedures.

Applicant shall present information regarding employment practices and compliance with FCC equal opportunity rules.

CONSUMER COMPLAINTS

Franchise authority should either specify how it wants to have consumer complaints handled and resolved or ask applicants to submit a plan for doing so.

Name the particular office or title of the person who will be responsible for implementing the complaint procedures.

Describe in detail the procedures planned to make the cable system readily accessible to complaints from both subscribers and others.

Describe in detail how, and to what extent, these complaints will be recorded, including how long such records will be kept.

Describe in detail the priorities that will be established concerning response to the complaints.

Describe in detail procedures for responding to subscriber complaints, including numbers and skill requirements of service personnel, vehicles and test equipment to be on hand and times at which service will be available.

Describe in detail plans for ensuring that each subscriber is notified of complaint procedures at the initial subscription to the cable system.